


Office of the County Clerk  
Council Services Division  
4396 Rice Street, Suite 209  
Līhu'e, Kaua'i, Hawai'i 96766

INTRA-OFFICE  
M E M O R A N D U M

October 22, 2012

TO: All Councilmembers

FROM:   
Ricky Watanabe, County Clerk

RE: MINUTES OF THE OCTOBER 10, 2012 COUNCIL MEETING

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This is to inform you that a copy of the Minutes of the October 10, 2012 Council Meeting are available electronically (located on your computer V: drive, MINUTES folder) and in the Council Services Offices for your review. These minutes will be submitted for your approval at the November 14, 2012 Council Meeting.

Please note that once these minutes are approved, the recordings will be erased.

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## COUNCIL MEETING

OCTOBER 10, 2012

The Council Meeting of the Council of the County of Kaua'i was called to order by the Council Chair at the Council Chambers, 4396 Rice Street, Room 201, Lihu'e, Kaua'i, on Wednesday, October 10, 2012 at 9:21 a.m., after which the following members answered the call of the roll:

Honorable Tim Bynum (*present 12:30pm*)  
Honorable Dickie Chang  
Honorable KipuKai Kualii  
Honorable Nadine K. Nakamura  
Honorable Mel Rapozo  
Honorable JoAnn A. Yukimura  
Honorable Jay Furfaro

### APPROVAL OF AGENDA.

Mr. Chang moved for approval of the agenda as circulated, seconded by Mr. Kualii.

Chair Furfaro: We have a correction to the agenda regarding the First Reading of the Bill: Proposed Draft Bill (No. 2452). County Clerk, may you clarify the amendment.

RICKY WATANABE, County Clerk: Councilmembers and Chair for Bill (No. 2452) the Bill currently reads: A BILL FOR AN ORDINANCE REGARDING ARTICLE 1, CHAPTER 19 OF THE KAUAI COUNTY CODE 1987, AS AMENDED, RELATING TO PARKS AND RECREATION PROHIBITING FISHING AT LYDGATE BEACH PARK POND. It should read and be reflective of the Bills title: AN ORDINANCE ADDING A NEW SECTION TO ARTICLE 1, CHAPTER 19 OF THE KAUAI COUNTY CODE 1987, AS AMENDED, RELATING TO PARKS AND RECREATION (Prohibiting Fishing at Lydgate Beach Park Pond).

Chair Furfaro: Would everyone so note the correction on the agenda. Now may I ask for an approval on the agenda as amended.

Mr. Chang moved to approve as amended, seconded by Mr. Kualii, and unanimously carried.

Chair Furfaro: Before we move to the next item, the formal recording of the minutes, I would like to give Councilwoman Nakamura a moment of personal privilege.

Ms. Nakamura: Thank you, Chair. This morning we wanted to acknowledge and celebrate the birthday of our Council Chair.

Chair Furfaro: Thank you very much.

Ms. Nakamura: We know we have all given you gray hairs within the last few years but we appreciate all of your work and commitment to this

position and to the County of Kaua'i, and thank you for that. As our collective birthday gift, we will all work toward getting out of this meeting by 4:30 pm today.

Chair Furfaro: That is a very nice gift. Thank you all for wishing me a Happy Birthday and in two (2) years I have hit sixty-six (66) and let us hope that they do not move social security back again. Thank you very much.

MINUTES of the following meetings of the Council:

August 15, 2012 Special Council Meeting  
September 5, 2012 Council Meeting  
September 19, 2012 Special Council Meeting  
September 19, 2012 Public Hearing re: Bill No. 2447 and Bill No. 2448  
September 26, 2012 Public Hearing re: Bill No. 2444, Bill No. 2445,  
Bill No. 2446 and Bill No. 2449

Mr. Chang moved to approve the Minutes as circulated, seconded by Mr. Kualii, and unanimously carried.

SPECIAL ORDER OF THE DAY:

TIM BYNUM was noted as recused from this item.

Chair Furfaro: Mr. Clerk, according to our rules, we have had three (3) previous sessions on item number C 2012-336 dealing with the Keiki P.O.H.A.K.U. Diversion Program. By our rules, it becomes the first item on today's agenda. I also want to say to the public that I am going to focus on our Rule Number 6 and 6(F), which allows the Chair to take public speakers up to three (3) minutes. Any additional time given is solely up to the Chair. Secondly, I would like Councilmembers to know that we have had ten and a half hours of discussion on this item over three (3) meetings and this item is about a \$35,000.00 grant. I would want to be able to take testimony, reach out to some people from the Administration for questions, and limit time and questions from the Council to two (2), five (5) minute sessions. After making that statement, if you want to appeal my decision, you may do so by our rules as well with four (4) votes, if not I would like to start a discussion of public testimony after I have the item read. If you are planning to speak, I would like you to speak through signing up so that we can call your name in advance. Is there anyone wishing to speak, please go to the podium.

While we are collecting the speaker's role, again to the Clerk, I would like the timer set to three (3) minutes. Please note in the audience we have the County Attorney, Alfred Castillo and Mr. Gary Heu from the Administration. Do you have the first speaker? Could you read the ones that you have right now so that they have a sense of the order?

C 2012-336 Communication (07/20/2012) from the Prosecuting Attorney, requesting Council approval to apply, receive and expend State of Hawai'i, Office of Youth Services funds for the Keiki P.O.H.A.K.U. Diversion Program in the amount of \$35,000.00, and approval to indemnify the State of Hawai'i, Office of Youth Services for the term commencing August 15, 2012. (Pursuant to Council Rule 5(C), Council absence at 10/03/2012 Special Council Meeting, insufficient votes to carry a motion, special order of the day at the next meeting.)

Chair Furfaro: Thank you very much. Could you read off the number of people that wish to speak and in the order that they will be speaking?

Mr. Watanabe: We have seven (7) registered speakers and the first speaker is Glenn Mickens followed by Elaine Dunbar.

Chair Furfaro: Glenn would you come up?

There being no objections, the rules were suspended.

GLENN MICKENS: Thank you, Jay. For the record Glenn Mickens. I find it disturbing that the Council has continued to spend countless hours on the relatively minor grant on the Keiki P.O.H.A.K.U. Diversion Program. Testimony from both County officials and the public has been unanimous and this Program will be a worthwhile endeavor. However, approval is being hindered and delayed by the extended commentary by one Councilmember apparently engaged in a political witch-hunt. The time the Council should be spending on matters of major significance rather than on a small grant of State funds. The political motivation for the Councilwoman's opposition of the Program becomes evident when we compare it with the absence of needed oversight in review on some of the more important recent matters. The Oloheua Bridge caused the taxpayers 4.8 million dollars whereas the Act Pro Company who built the bridge over the Wailua River would have put in a permanent bridge with the traffic rerouted one day not three (3) months for about \$600,000.00. Ironically, at 4:30 a.m. in these Chambers, Councilwoman Yukimura was the deciding 4-3 vote to give Unlimited Construction cut \$500,000.00 money bill that allowed them to do the project for 4.8 million dollars.

Chair Furfaro: Excuse me, Glenn. I am going to interrupt you a second. The agenda item has nothing to do with the bridge and I want to make sure that we all understand what I said earlier. As the Chair and the leader of this group, I am going to apply the rules equally and fairly for all. Please stay away from personal characterizing of the members, of the staff, or the Council. Consider that a warning.

Mr. Mickens: I understand what you are saying. The whole situation is grouped together, and I am trying to point out the ridiculousness...

Chair Furfaro: Glenn, I would like to take your testimony. Please heed the rules of the Council and stay away from any terminology that aggressively indicates personality.

Mr. Mickens: But how do I do that? I am trying to point out a certain thing.

Chair Furfaro: Let me say it real simple, avoid personalities, please.

Mr. Mickens: Okay.

Chair Furfaro: If you would like a copy of the rules that reference that, I would be glad to get them for you. Go right ahead.

Mr. Mickens: I talk again about the amounts of money spent on the Kilauea Bridge which was 12.2 million dollars and the same Act Pro Company would have built it for under a million dollars but where was the investigation at that time for any of the members, JoAnn, in particular. I am sorry...But where was the investigation you people have to find out why we spent 12.2 million instead of under a million dollars for this?

Chair Furfaro: Glenn, under our rules you may speak on any item that you have during your time. During our rules we can only respond to the agenda item, so do not expect an answer.

Mr. Mickens: Okay, no answer. For eighteen (18) years I have testified before Councils giving PowerPoints and facts showing where we are costing taxpayers millions of dollars by wrongly resurfacing our roads. But year after year the rubber stamp came down on repaving this with no one questioning what was being done until Larry Dill was hired as our County Engineer, which I really appreciate. The Hanapēpē Drug Center wrongly being cited for the Salt Pond cost us \$500,000.00. Twenty (20) years or more of not getting a new landfill will cost us a million dollars per year in Solid Waste Program. The eighteen (18) year Kilauea Gym debacle costed us hundreds of thousands of dollars, the Path costing us over five million dollars per mile and our Auditor's excellent report showing that we paid \$750.00 per square foot to build a new fire station and it was built two hundred (200) or three hundred (300) yards from the ocean where a hurricane or tsunami would destroy it.

Chair Furfaro: Your time is up, Glenn. Summarize quickly.

Mr. Mickens: Okay.

Chair Furfaro: If you are summarizing, summarize on Keiki P.O.H.A.K.U. not on all the challenges the Chief Engineer has had or all the things that you interper as a short coming, summarize on Keiki P.O.H.A.K.U.

Mr. Mickens: The waste and inconsistancy in our government I am sure that any of you, Councilmembers, can add to the list. My point is that our mo has to be consistent. We cannot nitpick about a small amount being given for a grant and ignore the millions that are being wasted on other activities. The waste that have occurred are self evident. But if we were to have better government we should pay careful attention to the projects that cost us millions of dollars and not nitpick about a small amount that we need to receive from a grant.

Chair Furfaro: Thank you. That was fair enough time for a summary.

Mr. Mickens: Okay. Thank you, Jay.

Mr. Watanabe: The next speaker is Elaine Dunbar, followed by Ken Taylor.

Chair Furfaro: Elaine, I know that you heard my comment earlier and know you will structure your comments towards Keiki P.O.H.A.K.U. and its benefits. But I need to just remind the audience that we want to avoid personalities.

ELAINE DUNBAR: I am clear on that.

Chair Furfaro: Thank you Elaine.

Ms. Dunbar: Good morning Mr. Chair and Councilmembers. Years ago when you, Councilmembers would come into these Chambers, you might find clean ashtrays at each seat so that you can smoke cigarettes, cigars, pipes or whatever it may be during Council sessions. But times have changed and now there are laws against almost everything nowadays. The kids cannot smoke in the parks and they cannot congregate with more than two (2) people. I know on O'ahu, three (3) kids congregating is considered gang activity and they can be prosecuted for that. There is a myriad of charges that a child can easily find himself being charged with. This could happen through the extreme peer pressure that is out there, or this could happen through inadvertently experimenting with a drug and substances that nowadays are engineered for their high addiction capabilities. It is very easy for a kid to start down a path without even realizing what has been happening to them. When this happens to a lot of children that have parents that are well-to-do, it gets wiped clean. They do not have to carry it around for the rest of that their lives, but when it happens to most of our local kids here it is devastating. The judicial system pretty much makes their bones on kids. The kids get charged which starts from the charge to the Prosecutor's Office to the Public Defenders Office, which is equally a part of this, because the Public Defenders Office usually works with the Prosecutor's Office to get plea deals which is not in the best interest of the child, and the child is threatened and told that if they do not take this plea they will be sentenced to years in jail. They terrify them. A child cannot possibly understand how the judicial system works and what is truly really facing them unless they have a qualified Attorney or an Attorney that is not so overwhelmed with cases that they cannot devote the amount of attention to them that they need to give them a fair opportunity. So with all of these things facing kids nowadays, let us say they get caught smoking in the park because Council has decided that this is a really terrible thing to do, so the child gets charged with smoking in the park. He is also hanging out with other kids, that may be smoking pot and he gets hauled in on that, there may be a sticker violation on his vehicle that he is near.

Chair Furfaro: Go ahead and summarize.

Ms. Dunbar: I will try real fast. So all of these charges are attached to the child on this one (1) arrest. He goes to court on them, the violations get handled separately. So there are numerous court appearances and then the child gets contempt of court, which could easily happen. It is a very understandable situation. Maybe their license has been taken away, they cannot get there, they do not have the money. Everything is expensive these days and all of these charges are profoundly expensive. There are hundreds and hundreds of thousands of dollars for most of the kids combined. Teen Court and D.A.G. pleas do not address this situation, this is a compounded situation for kids. Once it happens to them, the system gives up on them. When the system gives up on them, they give up on themselves and then guess what happens after that? Keiki P.O.H.A.K.U. is sorely needed and was needed a long time ago. It can wipe away a few of these ridiculous charges, and they are not always ridiculous, but they are not serious enough to punish the child for the rest of their life, where he cannot get a job, cannot be respected by the community or family members or is ostracized. There is a string of circumstances that occur from not being able to allow the child to have a fresh start

when he has time to think about what he did and what he wants to do in his future. Thank you. That is all that I have to say.

Chair Furfaro: Thank you, Elaine. Do you have the next speaker please?

Mr. Watanabe: The next speaker is Ken Taylor, followed by Joe Rosa.

KEN TAYLOR: Chair and members of the Council, my name is Ken Taylor. First of all, I want to agree with the issues that Mr. Mickens raised earlier. I think that it is really sad that we are here today after twelve hours on this grant request for \$35,000.00. Why has it been happening? Why twelve (12) hours for a \$35,000.00 grant? Why was the issues not asked about the Kilauea Gym? Now how many more years of work is needed because of the lack of taking care of the problem. \$750,000.00 per square foot for the fire station, where was the oversight? The lost of opportunity cost twenty (20) years of no landfill, what happened to the \$500,000.00 for the drug center in Hanapēpē? For eighteen (18) or twenty (20) years Mr. Mickens has raised the issues about the roads. What was done to solve the problems that Glenn raised? Finally Morgan's pond, thousands of dollars are being spent and no plan to solve the problem yet.

Chair Furfaro: Ken, let me tell you something, although you have a broad range the final decision is mine and I want you to get back to your time on Keiki P.O.H.A.K.U. I will gladly meet with you to talk about...even when I was not on the Council when these things happened, I will be glad to research any information that you want and provide it to you. I want to stay focused because I am only allowing people one speaking term according to our rules. You may continue, but if you have something to say about Keiki P.O.H.A.K.U., please focus on this item...

Mr. Taylor: I am just saying that if we are going to spend time, twelve (12) plus hours on nitpicking a \$35,000.000 grant, than lets be consistent and nitpick everything that requires spending money.

Chair Furfaro: We are in recess.

There being no objections, the Council recessed at 9:42 a.m.

The Council reconvened at 9:42 a.m., and proceeded as follows:

Mr. Taylor: The P.O.H.A.K.U. Program is a highly needed Program for the County and for the young people of the County that have gone astray. It is time to stop this monkey business and get on with approval of this P.O.H.A.K.U. Program grant. Thank you.

Chair Furfaro: Thank you Ken. Next registered speaker.

Mr. Watanabe: The next speaker is Joe Rose followed by Bryson Ponce.

Mr. Rapozo: Mr. Chair?

Chair Furfaro: Yes.



Mr. Rapozo: If I may, I just wanted to raise a point of order and maybe we can have the Clerk research. I mean no disrespect to the Chair, but our rules provide for two (2) opportunities to speak by the public. That is in our rules and I will cite the rule 12(E), 4(F) and (G). In (F) it says that in oral presentations shall be limited to three (3) minutes per speaker, extended time may be granted by the Chair and the Chair shall have the prerogative to set the speaking to for each speaker and may also set the order of speakers and so forth. But (G) says members of public shall be allowed to speak a second time on the same question and such speakers will be allowed an additional three (3) minutes to present testimony. After all such speakers have testified the Chair may allow an additional four (4) minutes. I want to make sure that we are consistent at every meeting and it is two (2) opportunities at three (3) minutes. But the Chair also has the right, and this is the warning that the Chair talked about earlier and I agree with him, that the Chair may restrict or terminate a speaker's right to the floor for intemperate or abusive behavior or language and I would agree with that. But I think our rules clearly states that the members of public have two opportunities of three minutes each to speak on any item Mr. Chair.

Chair Furfaro: Okay. If you so do want to vote to overrule my ruling that is fine with me, because you have that privilege. But I want to make a note that it does not reference, the fact that people are here for the third session and the sixth time speaking. That is what is not clear so I am giving everyone a chance to speak for three (3) minutes. But many people who have spoken and are planning to speak again today have had time to give testimony over the last several meetings, three (3) or four (4) times so we will leave it at that. Okay?

Mr. Rapozo: Mr. Chair, I am not going to challenge the ruling now. However, if there is a member of the public that wishes to speak for a second time, then I will. Thank you.

Chair Furfaro: Mr. Rosa, you have the floor.

JOE ROSA: Good morning members of the Council. For the record, Joe Rosa. Well I am here today again, I thought that the subject of P.O.H.A.K.U., Keiki P.O.H.A.K.U. was done and solved last week Wednesday. But like Council Chair mentioned, it has been ten and a half hours which is utterly ridiculous for a simple grant of \$35,000.00 which was given to the people of Kaua'i to go and enforce and get this P.O.H.A.K.U. thing started. It is solely based upon a bias animosity between two (2) people and it has been going on and on. Jay, as Council Chairman, you have been on the Council previously, you have seen that happen before in previous Councils when the two (2) people were on the Council. I do not know how you cannot see that. It is a basic bias problem. Why do the parties have to know how the people are going to be selected to go to Keiki P.O.H.A.K.U.? That is not her business and not her department. It is solely up to the courts. So I do not know why if I were to give you \$35,000.00 that you would not accept it with nothing to be repaid or anything. I would take the \$35,000.00 and would have a ball. So why the particular party has to be concerned with how they are going to select the kids to go to Keiki P.O.H.A.K.U.? That is none of their business because they have a Committee and they have the courts to select. So you know, that meeting that was held last week Wednesday, I stayed three and a half (3 ½) hours early in the morning, only to hear it was continuing in the afternoon, and so I went on to continue my other chores. It should have been stopped by the Council Chairman, because you asked for public information and the

public came. We heard from the County Attorney and the Prosecuting Attorney, herself based on a letter and it spelled out what the grant was for and yet, all of this silly discussion which accomplished nothing and it is still going on today. We elect people with integrity and it has not been shown. It seems like it is something that is being done in elementary schools, not like people with integrity. It is high time that you people get together and forget the bias between personalities and get this thing done. \$35,000, \$35,000, take it and do what has to be done with the intent of the \$35,000.00 grant. I thank you.

Chair Furfaro: Okay. Mr. Rosa, I just wanted to point out a couple things. The reason that it is back is by our rules.

Mr. Rosa: Yes, I understand that Jay.

Chair Furfaro: By our rules. Do you understand that sir?

Mr. Rosa: I understand that, I am not ignoring the fact that...

Chair Furfaro: So do not imply that the leadership has failed. Our rules for any money bill, you needed four (4) votes. Both times...

Mr. Rosa: Yes, I understand that.

Chair Furfaro: Both times you have not succeeded to get four (4) votes.

Mr. Rosa: But Jay the thing is you are always emphasizing I am the Chair and I go by my rules, but it is high time that you show that leadership and say and conduct it...

Chair Furfaro: Thank you very much.

Mr. Rosa: So...

Chair Furfaro: Thank you...

Mr. Rosa: So Jay like the old saying, "if you cannot stand the heat in the kitchen..."

Chair Furfaro: Following the rules means you need four (4) votes, you do not get four (4) votes then it automatically comes back as the first item. You understood..

Mr. Rosa: I understand.

Mr. Chair: You understood? Thank you Joe. Next speaker.

Mr. Watanabe: The next speaker is Bryson Ponce followed by Tina Sakamoto.

BRYSON PONCE: Good morning. Bryson Ponce for the record. Chairman Furfaro, Happy Birthday, members of the Council. Nothing has changed my position as far as supporting the Keiki P.O.H.A.K.U. Program. The reason that I am here is because the last time there were some questions that a couple

Councilmembers had that was asked of me to follow up on. I have some answers for you folks and I will just go over them. This relates to when I brought up last time about Maui with the P.O.I. Program that is very similar to what Kaua'i wants to do with the Keiki P.O.H.A.K.U. Program. The P.O.I. Program which is Positive Outreach Intervention Program holds juveniles accountable for their actions. Federally-funded to the Juvenile Accountability Block Grant from the Office of the Juvenile Justice and Delinquency Prevent, U.S. Department of Justice. The Program has been in existence since 1999 and the first graduating class was actually in January of 2000. Since 1999, there has been only a 12% recidivism rate, which is extremely successful. There have been seventy-four (74) graduations, and seven hundred and twenty four (724) graduates. What do they do in this Program- this P.O.I. Program? The juvenile offenders have to write an apology letter to the victim or victims, they have got to submit an essay on their involvement in the offense or the type of crime, provide a minimum of four (4) days which is Saturdays of community service, attend a second-chance class which focuses on laws, moral issues, choices, etc., they actually have to observe an adult criminal court proceeding, and also remain arrest-free. What do they do in the Program? Well they help the elderly community cleaning up their yards, their gardens and work outside of the residence. Not inside the house, but outside to avoid any temptation if juveniles are into thefts or stealing money and jewelry. They focus on the outside of the elderly's homes, they go to the lo'i in 'Ioa Valley and learn about the cultural aspect of growing taro from growing, cleaning, preparing of the taro, caring for the taro, help other non-profit organizations, and help with community functions and help clean and maintain other areas in the community. This is just some information to touch upon last time and that is all I have.

Chair Furfaro: We have a question for you.

Ms. Yukimura: Yes. Thank you, Bryson for doing that research and bringing the information back.

Mr. Ponce: Sure.

Ms. Yukimura: So who administers the Program?

Mr. Ponce: It is through the Juvenile Crime Prevention Division from the Maui Police Department, the Juvenile Counselor in charge of it is Ann Nakagawa.

Ms. Yukimura: Okay.

Mr. Ponce: They have counselors, police officers, retired and current military personnel helping in the fields and mentoring these kids.

Ms. Yukimura: So Ms. Nakagawa and her unit is the one that recruits these volunteer supervisors and screens them presumably too?

Mr. Ponce: Yes, she is in charge of the Program.

Ms. Yukimura: And...

Mr. Ponce: I did ask her this question because in Maui they do not have Teen Court in Maui.

Ms. Yukimura: Oh they do not?

Mr. Ponce: They do not. So I asked her, "on Kaua'i we have Teen Court, how do you think this could work with having Teen Court in the P.O.I. Program?" She told me that it would be great. One idea that I have is that Teen Court could be the first avenue for the other teens to judge your peers and then they could sentence them to the P.O.I. Program which could work hand in hand. She thought it was great idea to have both.

Ms. Yukimura: That has been some of my questions. What is going to be the flow of diversion and who is going to make the decision that the child is best starting at Teen Court?

Mr. Ponce: Yes.

Ms. Yukimura: That is what I have been asking. How much does this Program cost to implement?

Mr. Ponce: The initial implementation back in 1999 was somewhere about \$15,000.00. They have to buy tools to clean up areas, they get shirts for the kids and the volunteers to wear so that everybody is identifiable. Ever since then, it costs less than \$10,000.00 a year to run the Program and she said it could even be run a little less.

Ms. Yukimura: Well, it costs \$10,000.00 but what is the amount of people within the Police Department unit and...

Mr. Ponce: Maui is different because they have people that are paid on overtime, officers, and that other factor, or that number, I do not have. But initially I think for Kaua'i, there has not been the police factor involved in the onset and it might be in the future, I am not sure. You could use military personnel or drill sergeants sometimes work really good with the teens.

Ms. Yukimura: Okay, so right now to your knowledge there is not a specific plan to involve the Police Department here?

Mr. Ponce: I do not know. I cannot answer that. I am just speaking in support of the program.

Ms. Yukimura: Okay. Thank you very much.

Mr. Ponce: If I could add one thing, I am not speaking on behalf of the Police Department. I am speaking on behalf of Police Union, so those hard questions that you guys would have for our police personnel, they did not bring up the issue of P.O.I., I did. So I just wanted to throw that out there, that they do not have the knowledge that I have because I know Ann and this presentation was given, I sat in her class and talked to her about it.

Ms. Yukimura: Thank you for the homework that you did, it is very valuable information. I appreciate it.

Mr. Ponce: Okay.

Chair Furfaro: Mr. Rapozo.

Mr. Rapozo: Bryson, are you aware that Keiki P.O.H.A.K.U. and the P.O.I. Program are very different in the sense of who administers it?

Mr. Ponce: Yes.

Mr. Rapozo: Obviously the P.O.I. is done by Maui, the Juvenile Division.

Mr. Ponce: That is correct.

Mr. Rapozo: Does Kaua'i Police even have a Juvenile Crime Prevention Unit?

Mr. Ponce: No.

Mr. Rapozo: Exactly. And to your understanding is Keiki P.O.H.A.K.U. not going to be run by an external contractor?

Mr. Ponce: Yes.

Mr. Rapozo: So it is different and I explained this at the last meeting that the only similarity is that it is a Diversion Program and infuses the cultural practices into the actual Diversion Program.

Mr. Ponce: You are right.

Mr. Rapozo: But it is two (2) separate Programs.

Mr. Ponce: But as far as running the Program, it is different.

Mr. Rapozo: Right.

Mr. Ponce: What I was talking about was the concept of the Program, why I support the concept, and why it is a good idea.

Mr. Rapozo: I appreciate that. I did go to the website, the Maui website-Maui Police and there is quite a bit of information on the P.O.I. Program and it is a very succesful Program. But I think that as far as the cost, they have several counselors on staff, correct?

Mr. Ponce: Yes, they do.

Mr. Rapozo: With the Maui Police Department. So the \$10,000.00 that you talk about is really the hard costs to operate the Program and not the soft costs involving all of the arrests, the personnel and overtime.

Mr. Ponce: Yes, that is correct.

Mr. Rapozo: Thank you.

Ms. Yukimura: One more question, do you know what the overtime costs are for police involvement in the P.O.I. Project?

Mr. Ponce: I do not know.

Ms. Yukimura: Okay. Thank you.

Chair Furfaro: Thank you for your testimony. Next registered speaker.

Mr. Watanabe: The next registered speaker is Tina Sakamoto followed, by Dr. Ka-ni Blackwell.

TINA SAKAMOTO: Good morning, and Happy Birthday Chair.

Chair Furfaro: Thank you.

Ms. Sakamoto: And Councilmembers, hello. My name is Tina Sakamoto and I am a resident of Kaua'i. The other day I was shopping and I looked at a garment and it said, "one size fits all." I looked and said no one size does not fit all, nor does one Diversion Program work for all. I had the opportunity...no it was a privilege, I had the privilege to work and assist with a Native-American culturally-based Diversionary Program, where we were able to unite women who were participating in a substance-abuse program with their children over a three-day camp period. I saw positive results, and it was proven that this culturally-based program worked. It worked for the mothers and it worked for the keiki. So I urge you and I am asking you to move forward in favor of this Keiki P.O.H.A.K.U. Program for the people and for the children of Kaua'i. Thank you.

Chair Furfaro: Questions? Thank you.

Ms. Sakamoto: Thank you.

Chair Furfaro: Next speaker.

Mr. Watanabe: The last registered speaker is Dr. Ka-ni Blackwell.

DR. KA-NI BLACKWELL: Aloha.

Chair Furfaro: Aloha.

Ms. Blackwell: My name is Dr. Ka-ni, K-A-N-I. I am an educator and I have been involved with the P.O.H.A.K.U. Program previously when it was being offered. We are all for assisting our youths to make the right choices, as parents and as community members to fulfill their potential and to be our future citizens. When things go awry, we need to be there guiding them back. The Keiki P.O.H.A.K.U. Program does just that with Hawaiian values, self-reflection, and individual participation in change of attitudes and behaviors. I have a degree in cognitive psychology and I have worked with this Program to see changes in at the adults. That is harder than changing teens who are still formulating their experience. The change and the second chance is paramount to their future. Many of our local youth do not have the resources, the money, the background, the families sometimes to be able to afford that second chance and yet the P.O.H.A.K.U. and Keiki P.O.H.A.K.U. Program would do just that. Should the Program be questioned, held accountable and even perhaps scrutinized? Yes. That is part of your job. But it is time for the Council to move forward and approve this Program. \$35,000.00 is a very small investment in our youth, our community of youths especially the local keiki that we need to give a second chance with tools,

alternatives, and positive ways to not do it again. This is extremely important and I know all of you really want the same thing. But you have got to realize that we are not Maui. We do not have the resources, the programs, the counselors, the overtime payment. We do not even have a criminal justice system. We are grassroot people and we are trying our very best through the P.O.H.A.K.U. Programs to give something back that we can do to give that second chance to our youth and to our adults. So please move on, be in favor of this, pass it and show the community that you do care and that you are going to be supporting this program. Mahalo.

Chair Furfaro: Thank you.

Ms. Blackwell: Yes, JoAnn?

Chair Furfaro: No. We are talking so much about rules today and to the audience, let me recognize you to give you the additional time.

Ms. Yukimura: Thank you Chair and thank you, Dr. B for coming and for your input. I know how much you care about our young people. You said we do not have a juvenile justice system. Can you explain what you mean by that?

Ms. Blackwell: JoAnn, I am sorry, I am a little hard-of-hearing. Would you speak up, please?

Ms. Yukimura: Oh, sure. You said, I think I heard you say that we do not have a juvenile justice system and I just wondered what you meant by that?

Ms. Blackwell: Well like Maui, they have a Complete Criminal Division, do they not? A Juvenile Criminal Division and I do not think we do.

Ms. Yukimura: We do not and it was because of lack of money and a decision that I am not really familiar with. But if we feel that is important, we can put some money there. So what you are talking about building is what I feel I am asking questions about in terms of what is a system that would work best?

Ms. Blackwell: But...

Ms. Yukimura: Go ahead.

Ms. Blackwell: But in the meantime, the Program that is offered to you is very cost effective in what we are investing in?

Ms. Yukimura: How do you know that?

Ms. Blackwell: I have been investing in youth all of my life and that is forty-seven (47) years of a career in education. My personal opinion is that because P.O.H.A.K.U. is based upon Hawaiian values it makes a lot of self-reflection and choices and that is what the youth need do is better choices.

Ms. Yukimura: Who do you think should make the decision about which child goes into which Diversion Program?

Ms. Blackwell: That I am unfamiliar with. I am just familiar with working with the youth. Who chooses, how they get there, I really am unsure of how that is done. I just know that when they come to the program, if I am involved

or other quality people that are really there to help them, I do not even question why they are there. I look at the individuals.

Ms. Yukimura: Do you not think that someone who make these decisions about young people needs to have your kind of background in terms of an understanding of youth development?

Ms. Blackwell: It could be done in partnership, but I think the legal system, which I am very unknowledgeable about, I do not know how they would want a layperson like myself's opinion. They have to follow, just like I am sure there are all kinds of rules that must be abided by. They have parameters and boundaries in which they need to work. So I am not at that level and I really don't want to be. I see a good Program that does not cost that much that is going to immediately help. If you want to do a long-term plan with the Criminal Justice Program or whatever is needed, but right now there are many youth and they get older and older. If they do not get that second chance, their lives have been impacted so devastatingly that they cannot be the kind of citizens that we want for the future.

Ms. Yukimura: Thank you very much, Dr. B.

Ms. Blackwell: Thank you.

Chair Furfaro: Dr., we have another question from Mr. Rapozo.

Mr. Rapozo: Thank you for being here. I rememebrr you being here in the past getting recognized for your accomplishments. I know you said you are an educator, but you have been involved in education and psychology for quite a while.

Ms. Blackwell: Yes.

Mr. Rapozo: I also heard you say you were familiar and maybe participates in the P.O.H.A.K.U. Programs?

Ms. Blackwell: Yes.

Mr. Rapozo: Do you think that it is working?

Ms. Blackwell: It has not had had a chance. There were only three (3) classes for the P.O.H.A.K.U. Program. But the people who were in it, they were all locals, who got to see a different way of looking at the system. It was working and if you go by statistics you have to look at recidivism and see if they do continue on a positive path? But that takes time. So I cannot say it is that successful, but as an educator of forty-seven years (47), absolutely. The Program was actually devised around a psychological base of self-reflection, looking at society, looking at rules, looking at different things, and how you fit in. To see a change in that attitude and behavior, you know, blue lights, who cares? Well, it is against the law and we look at things deeper. So yes, it was and it was an eight (8) hour intensive class for these participants.

Mr. Rapozo: Did you notice a change or did you get the feeling that they were getting it?



Ms. Blackwell: Oh yes. But they had to write it out.

Mr. Rapozo: Correct.

Ms. Blackwell: They had to write a statement at the end what they proposed to do. You cannot just do verbiage...

Mr. Rapozo: Correct.

Ms. Blackwell: It has to be action so I do not know if they follow through, but they sure seem like they would. They were able to recognize what they had done and to understand more about law-abiding citizens. It may seem simple-driving without a license, but to be affected the rest of your life, you know? They had to see it's the rules, it is the laws. We need to be part of society and contribute, and then to have service connected to it was wonderful.

Mr. Rapozo: I think you would agree and maybe you do not know this, but I do not think the courtroom and jail does that.

Ms. Blackwell: I bristled and apologized to the man who said it but but drill sergeants working with these keiki, it is like that is one of the reasons why they are there. They have authoritative issues and to put someone in their face saying do it or else, it does not always work and I think that is why we get the youth rebelling. So having an approach that you are looking at the individual to be able to contribute to society and to have social justice among our system. Everyone cannot afford the same thing. This is why I feel this Program is so needed.

Mr. Rapozo: There is some suggestions that maybe the lay people like yourself would make the referral or determine who goes, but do you feel you are in that capacity? I mean even with forty-seven (47) years of educating and being part of the community, but a referral is done after many, many considerations are done. Not just with the violator, but with the Police Department, the Courts, the Prosecutor's Office and lot of those records are confidential. A lot of those records are private. Do you feel that would be appropriate for you?

Ms. Blackwell: No.

Mr. Rapozo: Thank you.

Chair Furfaro: Councilwoman Nakamura.

Ms. Nakamura: Thank you Doctor, for being here.

Ms. Blackwell: Thank you.

Ms. Nakamura: Your personal and your professional opinion is very important to me and I thank you for your insights. I have a question because I think that everyone realizes that the amount of funding available to this Program is really a start. It would allow the County to get started, but also recognizing that it could be a bigger and better thing with more lasting impacts if designed right. Would you be open to a process that looks at that bigger picture on what we might be able to do, if there is some leadership and commitment to doing that?

Ms. Blackwell: Absolutely. If it effects our youth and our community, as you know, I am a University professor and I had to go back to work this semester. But I do plan to really retire in December. I looked at all possibilities in our community. What did I want to do? Where were my strengths? What would I want to give back to the community? I do not want to do Hawai'i, I just want to do Kaua'i. I definitely do not want to get into politics and I commend all of you who do serve. But my serving is at a different level and it is for education, and this is basically education. This Program is educating and getting the keiki to look differently at what and where they are. If it involved the planning, I would never want to be involved in the legal system to choose since that is out of my expertise, but in advising and helping our community, absolutely.

Ms. Nakamura: So would you be willing to participate in a process that builds on this type of concept, but looks at maybe the long-term services that might be needed and how those services could be coordinated on the island?

Ms. Blackwell: Absolutely, and as we all know service is where it starts. We have to give service and give of ourselves before we can actually be a solid citizen. This is what I think would be excellent to do a long-term or a bigger picture, to say how can you actually be a participant?

Ms. Nakamura: Thank you.

Ms. Blackwell: Thank you.

Chair Furfaro: Thank you. Mr. Kualii.

Mr. Kualii: Aloha and mahalo, Dr. Blackwell. You have answered a lot of questions and a lot of my questions and I am moved by you and I just had to chime in and say mahalo. Mahalo for your forty-seven (47) years of work and education is clearly the most important thing that we need to do with our youth and incorporating the Native Hawaiian values is just a powerful thing. The place, I mean, the potential is amazing and I really hope we can just get started. Thank you.

Ms. Blackwell: Okay, thank you, KipuKai.

Chair Furfaro: Vice Chair.

Ms. Yukimura: Yes. Dr. B., you were involved in the P.O.H.A.K.U. Program right? And so you said that community service is a very important aspect of it. It is my understanding that the community service requirements were canceled for people, are you aware of that?

Ms. Blackwell: No, they were not. The reason why I know that is that some of them thought that and they came up to me at their little break time and said, "how can...it says now I need to do thirty (30) hours of service." I said, "well that is with the Prosecutor's Office. I am just here as your guide." So I do not know about that, but I think every well... I cannot say every, out of thirty (30), I would say twenty (20) had to do service.

Ms. Yukimura: But was it the full service that was completed?

Ms. Blackwell: I do not know, JoAnn. I just know that they had (X) number of hours and had to do the service in the where they committed the offense. They had a whole list and were asking my opinion, and I do know communities, and I say that you will enjoy that you will be helping out there. That is about the extent to which I was involved

Ms. Yukimura: Alright. Thank you very much.

Chair Furfaro: Thank you Doctor.

Ms. Blackwell: Thank you.

Chair Furfaro: There are no more questions from the body. Next assigned speaker.

Mr. Watanabe: Council Chair, we have one more speaker, Arthur Brun.

Chair Furfaro: Arthur Brun.

ARTHUR BRUN: My name is Arthur Brun and I am here for the P.O.H.A.K.U. grant. I guess I do not know why we are even against this grant. This is for the youth of Kaua'i. I am an ex-drug addict. I started doing drugs when I was fifteen (15) years old and did it until I was twenty-one (21) and went to a rehab, that never helped me. I got back on it at thirty years (300 old and I am clean and sober for eight (8) years now. We need something for the youth. I do not believe we are thinking about this, but we are supporting the Marathon, which is not benefiting anybody from Kaua'i. We can give them hundreds of thousands of dollars, but we cannot help our own youth on Kaua'i. Please pass this so we can help our youth and I just talked to Big Brothers and Big Sisters and I will be doing drug talks for them and even with this Program, I will do drug talks for them also. I got in at thirty (30) years old with ice and I see some of the officers here, who know me. I was a known as the number one drug dealer on Kaua'i. I got shot at. I got all kinds of stuff and now I am redoing my life. This is what we have to do for the kids and not for people who do not live here. Do it and do it now, because we cannot be against this grant. It's only what, \$30,000 or something? Big deal. This could benefit our kids of Kaua'i. Please put your personal politics out of this and help our kids of Kaua'i. That is just my opinion.

Mr. Rapozo: Thank you for coming down. I just have one (1) question actually maybe two(2). But one is, when you were younger in the teens, you said you started doing drugs at...

Mr. Brun: Fifteen (15).

Mr. Rapozo: If you had...was there any Programs like this?

Mr. Brun: Not that I know of.

Mr. Rapozo: Okay, that was the first question. Second question is, if there was one do you think there would be a possibility that your life, not saying that you life today is a bad one because I think you are doing a lot of good for the kids today and I know that from personal experience, but you had a really, really rocky road in between.

Mr. Brun: Yes.

Mr. Rapozo: If you had an opportunity for a Diversion Program, do you think maybe it would have helped?

Mr. Brun: Yes. The thing is that my dad died when I was four (4) years old and I lived without my dad my whole life. If I had different things to do in the community, would I have changed the things the way I went? Possibly. I cannot say yes or no but there was none of this that I know of that was there for me. All I knew was high school sports which I did not want to do so I started drinking, doing drugs, fighting chickens, gambling and that was my life in high school. There was none of this...

Mr. Rapozo: One more I am sorry. I guess I just want to rephrase this a little different. You work with kids today, a lot of kids, and you help a lot of kids but do you believe that this program would help some of our kids today? There are two (2) tracks in life, one they can go through the system and they can end up in boys home, girls home or eventually prison or a Diversion Program which could...as the Doctor stated earlier. As she stated this whole new concept, talk about thinking outside of the box, do you believe that some of our kids today that you work with may have a second chance with something like this?

Mr. Brun: Yes. Yes.

Mr. Rapozo: Thank you.

Mr. Brun: Another thing that I started was in memory of Max Ogor, a lot of us heard about him. He was a baseball player from Waimea that passed away. I started a Baseball Program that I bring kids to O'ahu travel and try to keep them off the streets, bring them to clinics with proscouts, college scouts and try to do that. That is some of stuff that we are doing out of our own pocket. This Program would help bring more kids out to do and bring out their good things that they can do instead of turning to drugs and alcohol because there is a lot of it out there. Please pass the grant because we need to help the kids.

Ms. Yukimura: I just wanted to thank you for coming to speak. It is really heartfelt and you speak out of a lot of experience. I know that your mind and thoughts are about the young people of Kaua'i, so thank you very much.

Mr. Brun: Thank you.

Chair Furfaro: Mr. Chang.

Mr. Chang: Thank you. Mr. Brun, thank you for being here and thank you for sharing your testimony because I never knew and I am glad that you came out here today. You started at or around fifteen (15) years old. Was that in your day about maybe when people started or would you say you started early?

Mr. Brun: Yes, that was about the time in high school.

Mr. Chang: So the interaction that you have with children or young adults these days, do you have any idea when they start? What would be a...

Mr. Brun:                               Nowadays, seventh grade or eighth grade.

Mr. Chang:                           That is the information that I have been hearing. From my generation to your generation down to their generation, the level of drugs would you say is just way out there and so much more diverse?

Mr. Brun:                           Yes and much harder. There are a lot more drugs out there than there used to be before and I guess, education is a key. You cannot force a kid to not do it, but education is a key to turn them into the right direction of what they are going to do or what they are not going to do.

Mr. Chang:                           So you know the drugs are way more heavy-duty, they are mixing it with, so I am told, drugs, alcohol and everything else. But you know in many case these smaller, less matured bodies, if you will, that just is a whole different feeling that it may make these kids way more disturbed but and cannot be thinking in any rationale way at that point.

Mr. Brun:                           Yes. They are starting younger and they are just smaller bodies, and they are not developed yet. We have just have to give them a chance, give them a chance in life. I am glad I got out when I did and made the best of what I am doing now. But we need to give these kids a chance to get education and be aware of what is going on.

Mr. Chang:                           I just want to thank you, Mr. Brun, because as I mentioned I never knew and there is a lot of people that we do not know about their past. But what you do with the youth and for the youth; umpiring or we see on the side of the road doing your portuguese sausage or what have you, but I just want to say that I am glad that you straightened out because that is a great testimony for everyone on Kaua'i.

Mr. Brun:                           Thank you.

Chair Furfaro:                   Mr. Brun, thank you very much for being here, and may I personally congratulate you on your accomplishments. Thank you very much. Is that the end of our speakers?

Mr. Watanabe:                   Yes.

There being no objections, the meeting was called back to order, and proceeded as follows:

Chair Furfaro:                   I would like to take a moment of personal privilege and I want to make sure that the Councilmembers are hearing this as I call the meeting back together. First and foremost, when you are a leader of a group such as the Council, it is very important to model the way and in modeling the way I think that I have been very, very consistent and flexible. But modeling the way and keeping the decorum is based on having rules. I have tried to apply them as well as I can. Leadership is also about providing an inspired vision to get this group to a common vision, it is so very, very important. There is challenges along the way in leadership and enabling others to act and give them the kind of freedom that they can express themselves. When this started today, I had said to you that we had ten and a half hours of previous testimony and sessions. I also want to point out for the gentleman in the front that the Chairman has the flexibility of setting the tone what the speakers want ot testify on and I have been very flexible. But I feel today

that it has been abused a bit. I would reference you to go to 12(D) of our rules and I am going to read it. "For the persons who are testifying the Chairman has the flexibility and tried to limit the testimony only on the subject matter under consideration and shall ask those that are testifying to refrain from any direct questioning of the Councilmembers and of the Chair. To the three (3) gentlemen in front I want to make sure that you understand that 12(D) is what I referenced today and that is rule. To Mr. Rapozo, if we want to change the rules you have the privilege, we have a Rules Committee. In 13(F) it also says that the Chair shall have the prerogative to set the time for the speakers at the Chair's discretion. We are on our third session of this, I have taken that into consideration. But modeling the way is also about having parameters and rules and I think the Doctor spoke very well on that. One thing that I knew from my days in high school playing football for Larry Ginoza, you follow the rules. If hit a guy that was out of bounds, you were on the bench. If you tackled somebody using a face mask, you are on the bench. I just want to make sure that you are understood, the leadership of this Council is based on modeling a standard, having an inspired vision for the group to get things accomplished and also enabling others to act, but act within reason and the parameters of the rules set. Members, thank you for that moment of personal privilege. If you want to revisit the rules, as a member of this body you have the authority to go to the Rules Committee.

Now on that note is there a need to have someone from the Administration up? Mr Barreira, may I ask you to come up first. The rules are now suspended after I have had my moment of personal privilege. Councilmembers, I would like you to please be focused on your questions and not carry this through. A lot of narrative on items that we have already covered.

There being no objection, the rules were suspended.

ERNEST BARREIRA, Assistant Chief Procurement Officer: Good morning Chair Furfaro, Vice Chair Yukimura, and members of the County Council. Ernie Barreira, Budget and Purchasing Director.

Chair Furfaro: Did you have a question, Vice Chair?

Ms. Yukimura: There has been some question about the Charter provisions regarding the Office of the Prosecutor and whether or not there is legal authority for them to establish a Program like this? Has that been established between you and the County Attorney?

Mr. Barreira: I cannot speak to that issue. I understand that there has been a request for a legal analysis. I am not privy to that analysis nor can I make that analysis.

Ms. Yukimura: But are you not required to know before you go out to procurement that there is legal authority for the Department that wants to go out for procurement?

Mr. Barreira: Only if a legal challenge that is raised prior to the procurement. I believe the legal challenges and questions came up post the procurement activity.

Ms. Yukimura: Have you asked the County Attorney for an opinion?

Mr. Barriera: I have not, Vice Chair, but I understand that members of this body have.

Chair Furfaro: The question had gone from the Chair based on the following: this County accepts \$15,000,000.00 a year in grants and donations that go to various Agencies for their particular mission and task. Example, we get \$10,000,000.00 in grants for the Housing Department. But then the Housing Department often subcontracts specific developers, who bring the expertise to the table on affordable housing purchases, rentals, and then subsequently are charged with the management of those projects. How does that relate to this Charter issue? That is a question from me. We have other issues that come up, such as Civil Defense grants. We have other items that come up even in Life's Choices, that brings us to other challenges when it comes to the structuring of the Administration on how Life's Choices becomes a functioning body of the Administration or Boards and Commissions? Those are the questions that went over from the Chairman and I do not take it as a light issue but one we need have a legal opinion on. Perhaps that question should be held for the County Attorney and not yourself. Any other questions? Thank you very much. No other questions.

Mr. Barriera: Thank you.

Chair Furfaro: Is there anyone else from the Administration that someone from the Council would like to have come up? County Attorney, has been requested to come up.

ALFRED B. CASTILLO, County Attorney: Good morning Council Chair and Councilmembers, Al Castillo, County Attorney.

Chair Furfaro: Al, before we go any further, you were traveling when I sent the questions over but I sent it over to the First Deputy, Amy Esaki.

Mr. Castillo: Yes. Council Chair on those matters, I believe you have given us a deadline of October 17th to answer those questions.

Chair Furfaro: That is correct.

Mr. Castillo: We are on our way to doing that. I agree, there is an understanding that various Agencies have there particular missions and tasks to do under the Charter. We will be able to answer your questions. I have not read your particular questions, but I am here for Keiki P.O.H.A.K.U. if anybody wants to question me about that.

Chair Furfaro: Vice Chair, do you have a question for the County Attorney?

Ms. Yukimura: Yes. There was a question raised in the last Council Meeting, I think Councilmember Nakamura raised it. As to whether the Prosecuting Attorney under the Charter has the authority to oversee or administer Diversion Programs?

Mr. Castillo: Under the Charter, if you were to specifically read the Charter provision, the Prosecuting Attorney does have a list of...I would say, authorizations. It is clear that it does not contain Diversionary Program.

Ms. Yukimura: Is this request for a grant that...is that then illegal?

Mr. Castillo: In terms of the Keiki P.O.H.A.K.U. Program, with the information that has been provided to us, we cannot find any authority for that Program at this point in time.

Ms. Yukimura: Have you communicated that to the Office of Procurement?

Mr. Castillo: Well, right now I have. But see on the procurement issue I understand the situation where Mr. Barriera is in. What normally happens is the Agency will go through the procurement process and what we would do is when a contract is being established, we are sent the draft contract for review. If a question is raised regarding authority or procurement issues and contract issues, we would analyze the contract for legality and form.

Ms. Yukimura: But why should we be going through all this time and effort if it is not legal for the Prosecuting Attorney to administer such a Program? Do you have a written opinion that documents this?

Mr. Castillo: You raise a good question on the policy question on the effort that this County is going through at this point...

Ms. Yukimura: I am not asking a policy question, I am asking a legal question.

Mr. Castillo: I have given you a legal answer from the County Attorney being that with the information that we have regarding the Keiki P.O.H.A.K.U. Program there is no authority under our Charter.

Ms Yukimura: Then you should stop this vote, if there is no authority to do this?

Mr. Castillo: I am sorry but I do not have the authority to stop this vote, but I can give you my legal opinion.

Chair Furfaro: On that note, if I may interrupt. I want to make sure that if you are making that decision, we are back to my question that I answered last week and that is that you measure risk in this County.

Mr. Castillo: Yes.

Chair Furfaro: The Council decides on policy.

Mr. Castillo: Yes.

Chair Furfaro: And understanding the risks for approving a Program like this, you would participate in?

Mr. Castillo: Yes.



Chair Furfaro: And I would think being the Council Chair, in sending you these questions about all of the other exposure that we have, maybe, as much as \$15,000,000.00 in grants, that you would prepare a legal response to our question by the deadline I gave you.

Mr. Castillo: Absolutely.

Ms. Nakamura: Al, thank you for responding to my request from the last meeting. So basically, if that contract comes across your desk, your office will not sign off on it as to form and legality?

Mr. Castillo: The hard part about this is that I am being asked to speculate on what the contract will look like, I do not know what the contract will look like. I am just saying based on the information that I have, if the contract does not contain the requirements that makes it legal, then we would not sign off.

Ms. Nakamura: What is the basis of your opinion that it is not legal?

Mr. Castillo: The basis for the opinion, basically primarily comes out from the Charter. The Prosecutor's Office does have the authority and the ability to prosecute cases. What does that mean? They can charge, they can decide not to charge, and when the Prosecutor's Office decides not to charge, then what happens after that? You know, I have heard some discussion regarding what happens on Maui. The P.O.I. Program and it is a diversion program, yes. But it is totally run by the Police Department. So I do not know if I am answering your question.

Ms. Nakamura: You are just saying that the Diversion Program as you understand it, being operated and funded...

Mr. Castillo: By the Prosecutor.

Ms. Nakamura: By the O.P.A.?

Mr. Castillo: By the Prosecutor's Office, yes, because in the Charter, there are areas in which conceivably the Mayor's Office could run a Diversionary Program. The Police Department could just as the Maui Police Department. We have been in contact with the coordinator there, Allison Ishikawa. We have made the comparison and contrast on what is on the agenda today and other Diversionary Programs.

Ms. Nakamura: In the past though the Office of the Prosecuting Attorney has been the vehicle through which many Federal and State grants for Diversionary Programs has been a past practice. So are you saying that it needs to cease?

Mr. Castillo: No. What we need is a fact-specific analysis on each program. For instance, the Teen Court Program, the question that was asked before, why is that legal? The way that it is constructed-the Teen Court program, it went through the procurement process, it went through the contract process, it went through the memorandum of understanding and it has been a long time program for many years, over a decade. I was there when Kelly Ito was there but the way it was created was to me legally it was okay. It morphed a little throughout the years and

during that process that is where I cannot say that the Teen Court is illegal. But it does have its legal challenges. Basically if and when the Office of the Prosecuting Attorney exercises dominion over the Program itself.

Ms. Nakamura: If the O.P.A. just worked as a pass-through, and did not itself expend funds or help to coordinate portions of the Program, then it would be okay?

Mr. Castillo: The funding process may be a different question, which we have not fully...the pass-through, we have not fully vetted out yet legally. But this is the way that the more that the Office of the Prosecuting Attorney controls the Program, the more it gets into difficulties with the Charter, because the Charter basically does not express that authority. Let me simplify the thought process. The Prosecutor's Office can say we decide not to prosecute and these are the cases that we are not going to prosecute because of whatever reason. Now an Agency can come up and say, well, Prosecutor, if you are you are not going to prosecute these cases, then can we have an understanding of what is going to happen here? If that happens, then it is my opinion that would not conflict with Charter.

Chair Furfaro: We are looking for that on October 17<sup>th</sup>.

Mr. Castillo: Yes.

Chair Furfaro: Al, I want to make sure that everybody understands that we talk about these Special Programs, they have been around a long time, long time. I mean, 1995, some of these Programs were developed with Officer Taylor, Officer Ito and then Chief Kyle Fujita. I have done a lot of historical research on that and funding from these Programs have started with the Police Department and then have gone to the Mayor's Office under the Youth Services Director that was in Mayor Kusaka's Administration. She went on to go to the State Program. The State fell into issues with money in 2008. What used to be a \$60,000.00 grant we got from the State is now less than \$5,000.00. The County has still kept its \$18,000.00 for the Prosecutor's Office, and we have gotten \$18,000.00 from the Feds and that is a subject for October 17<sup>th</sup> if we have a commitment. But these Programs have been in place for over seventeen (17) years and we are coming upon this question now. I just want to portray to you, that is why the questions that I sent over to you, it is more than this Program that is of concern. It is concern of how we then subcontract housing projects, Life's Choices and so forth. It is all of them.

Mr. Castillo: I understand. Kelly Ito, Chief Fujita, and I was the Deputy Prosecutor at the time and I went back and looked at the historical basis for that. Looking at the historical chronology of that particular program, I could understand how it morphed. But the question here is Keiki P.O.H.A.K.U.

Chair Furfaro: I understand, Al. Counselor, I understand that. I am saying that the flag should have gone up back in 2007. We had enough history and that is all I am saying. I look forward to your response on October 17<sup>th</sup>.

Mr. Castillo: Yes. If it went up, I was in private practice then and I would not be here right now answering questions.

Chair Furfaro: There are several of us that were on the Council in 2007...

Mr. Castillo: I know.

Chair Furfaro: At the time in that year alone we went through three different County Attorney's so I would like to get some clarity on the interpretation.

Mr. Castillo: Okay.

Chair Furfaro: I look forward to it on the seventeenth.

Mr. Rapozo: Al, I did not understand the answer you gave to Councilmember Nakamura. What is the difference between this process, which apparently went through procurement and I guess you said that if nobody raised a challenge at that point, it goes through. But what is the difference between back when Teen Court was established, when you said you were a Deputy Prosecutor, is that what you just said?

Mr. Castillo: Yes.

Mr. Rapozo: Did the Charter back then give the Prosecutor's Office an express authority do Diversionary Programs?

Mr. Castillo: See, the misnomer Councilmember...

Mr. Rapozo: That is yes or no.

Mr. Castillo: No, No, wait, wait, let me answer your question, please. The way that the...if you look at Teen Court, and you look at Hale'opio, and you look at Teen Court coming off of Hale'opio, this is not a Prosecutor's Program. This is Hale'opio's program, they run Teen Court...

Mr. Rapozo: And...

Mr. Castillo: Wait, wait...

Mr. Rapozo: But I need to clarify...

Mr. Castillo: Let me answer please.

Chair Furfaro: Excuse me, Mr. Rapozo, let the County Attorney summarize his point.

Mr. Rapozo: I am sorry and I apologize.

Mr. Castillo: The way that they have it set up is the Prosecutor's Office for Teen Court as it was set up then was that these are case that they are not going to prosecute and then they would establish a memorandum. The Prosecutor's Office had nothing to do with the Teen Court after that. So that in and of itself is a distinguishing factor. Now what is the difference between that and Keiki P.O.H.A.K.U.? The problem, with Keiki P.O.H.A.K.U. and I can summarize it, just like how the Assistant Chiefs here, the question to one of the Assistant Chiefs was

how do you see the Police Department involved in the Keiki P.O.H.A.K.U. Program? The answer was, at this point in time was I cannot answer that until we have means to coordinate that. That is exactly what I have been asking. We need information to know how the Program is going to be run, how much involvement will the Prosecutor's Office will have, during the analysis, will it interfere or conflict with the provisions of the Charter? We have not had the opportunity to do that, because we do not know enough.

Mr. Rapozo: That is good. Now the Police Department does not have an express authority as well to do Diversionary Programs in our Charter?

Mr. Castillo: The Police Department in the Charter has...

Mr. Rapozo: I do not see it.

Mr. Castillo: It is not express. It is implied in the kinds of business that the Police Department.

Mr. Rapozo: But it is not implied in the Prosecutor's Office?

Mr. Castillo: Yes.

Mr. Rapozo: It is your opinion?

Mr. Castillo: And I am the County Attorney.

Mr. Rapozo: I understand that.

Mr. Castillo: You may have a different opinion...

Mr. Rapozo: And I do. But I sat in the Charter Review Commission Meeting a while back. I was there for another matter, in fact, for the "shall" versus "may," believe it or not. But prior to that coming up there was discussion on whether or not to put that in Charter.

Mr. Castillo: Yes.

Mr. Rapozo: The Charter Commission voted to support putting that on the ballot. I was at that meeting. I was there with my own ears.

Mr. Castillo: I am sorry, I was not.

Mr. Rapozo: I know, but I am telling that the record will reflect that at that meeting, they said that makes sense. They voted and I believe it was unanimous and then when the thing came out, it is not on. This Charter ballot question that was supposed to be on the ballot this year, that item was not on to add in Diversionary Programs. I talked to two (2) Commissioners, Charter Review Commissioners that told me, "we were advised that we did not have to put it on because they already have the right to do that."

Mr. Castillo: I am sorry...

Mr. Rapozo: I want you to understand why I disagree with you.

Mr. Castillo: I am sorry I was not there.

Mr. Rapozo: And apparently and I do not know who the Deputy was there. I am thinking who advised the Charter Review Commission now to take it off the ballot, when they voted to support it? I will go get the minutes, but that troubles me, because now we are hearing that they do not. If they do not, then it should have been on the ballot. If in fact, the Charter Review Commission. Maybe you do your research with your deputies to find out why that Commission was told we did not need this item – I am asking you to go find out because it is not right, Al.

Mr. Castillo: Yes and I will go find out exactly.

Mr. Rapozo: I am beginning to see a pattern that I am uncomfortable with. The other thing is, and I do not know if you folks were aware of this, probably not because it did not make the paper, but I can tell you that I was there when they called for the question.

Mr. Castillo: I am sorry, I have no information.

Mr. Rapozo: It just bothers me because today we are hearing now they do not have express authority. The other thing...

Mr. Castillo: Wait, to that, and, you are seeing a pattern. And I do not know what you are referring to, but as far as I am concerned, everything that you have mentioned regarding the Charter Review Commission I have no knowledge of.

Mr. Rapozo: Well, we can request the minutes of the Charter Review.

Chair Furfaro: I just did.

Mr. Rapozo: Thank you. I was there and I know what I heard, and I counted the votes and it was unanimous and I thought at that time I did not really understand what was happening with the express authority. So the Charter Review Commission, I was there when the Prosecutor's Office requested that to be put on the ballot and I was there when they voted and supported it. Maybe when the Prosecutor's Office comes up they can clarify more on that. The other thing is that the Gary Slovin opinion.

Mr. Castillo: Yes.

Mr. Rapozo: Says that they do have that authority.

Mr. Castillo: No, see...

Mr. Rapozo: No. Let me finish now and then you can answer the question.

Mr. Castillo: Okay.

Mr. Rapozo: The Gary Slovin opinion says that by what he has read and in his research that, in fact, the Prosecutor's Office does have the right and the authority to do Diversionary Programs. In fact that was cited in his

opinion. I realize that maybe he was not acting in the capacity of a County Attorney or a Deputy County Attorney or whatever it is, because for whatever reason he was contracted. But I did see a memo that came from you, to Gary, saying that, in fact you are acting as if you were the Deputy County Attorney. I am just saying fine, if that message comes to me from the Attorney who was hired to act in my shoes, now I have two conflicting opinions; one from the County Attorney that says "no" and one from a Special Council that acted in the capacity of a County Attorney that said "yes." Now we are told we have to wait another two (2) weeks. I am not supporting a deferral.

Chair Furfaro: First of all, Mel, in all fairness the outline of questions that I gave them from the testimony that they gave a week ago, the deadline was put on from me. They do not...

Mr. Rapozo: Okay.

Chair Furfaro: I just want to make it clear that I asked them to be prepared to give me responses by October 17<sup>th</sup>, that deadline came from me.

Mr. Rapozo: Al, the question is, can we vote to approve this today? Contracts have not been written and we are just approving the funding. I do not see a problem with it and I happen to agree that Diversionary Programs can be administered but that is just my opinion.

Mr. Castillo: Okay.

Mr. Rapozo: I am not a lawyer, but is it okay to vote on this today in your opinion?

Mr. Castillo: Let me go a little bit backwards. Is it okay to vote? The answer to that is basically you can vote on whatever the Chair says is up on the agenda. My recommendation to you as County Attorney is that the Keiki P.O.H.A.K.U. Program with the information that we have is not authorized by the Charter. Based on that, I will recommend that you do not vote in favor of this until the Program receives legal clearance. Let me go back about Mr. Slovin. When Mr. Slovin wrote what he wrote, it was-excuse me.

Chair Furfaro: Please in the audience, we pick up discussions on the floor very easily and it conflicts with what is coming through the mics. Go ahead.

Mr. Castillo: Mr. Slovin, it was his last three (3) days when he left that law firm of Goodsill, and he went to another law firm. Basically the agreement was that he was to replace Jennifer Winn, who was assigned to that office and only in matters involving P.O.H.A.K.U. in the civil arena. He was to be like a Deputy County Attorney. What I specifically wrote to him was a Deputy's primary obligation in this instance, Slovin's obligation as Special Counsel is to the public. Now his opinion, he framed his opinion and he attached it to a Diversionary Program, which is established. But he did not do a legal analysis, cite case law or did not reconcile the Charter. These were his impressions. What Slovin said there, I mean, you can use it for what it is worth. But to this Council with the extensive research that we have done and it's clear, it is not expressed in the Charter, that is all have I to say. Thank you.

Chair Furfaro: Any more questions for the County Attorney?

Mr. Chang: Thank you Chairman, thanks Al. Two (2) weeks ago our Chairman asked us next week we are going to take a vote. Last week the vote was 3-2, but four (4) votes were needed. If a fourth vote was cast, and it did end up 4-2, would this discussion be happening today? What kind of ramification...if it passed last week, what would have been the discussion like today?

Mr. Castillo: Councilmember Chang, I do not want to speculate. What I have before me is please let me know what the legality of the Keiki P.O.H.A.K.U. Program is. What is the status right now and I gave you the status. I do not want to go back and speculate what would have, could have, should have happened back then. I am sorry.

Mr. Chang: I understand.

Chair Furfaro: This amount of \$35,000.00, what kind of risk do we have? That was the question that I posed. I look forward to the answers to my October 17<sup>th</sup> questions that affects the whole County in interpretation. But I do ask you to go back and review the history, which it sounds like you have.

Mr. Kualii: You say you do not want to speculate, but I think your recommendation to say that it is not authorized by the Charter and until it receives legal clearance may be based on speculation, because Councilmember Nakamura's question about if the contract came across your desk, the contract to move forward with the Keiki P.O.H.A.K.U. Program. Would you approve and sign off as to its form and legality? At that point you did not automatically say no, because it is illegal, because of this, this and that. You said you did not want to speculate and that you would have to see the contract. So, in fact, we can approve this matter. The Prosecutor can go work out that contract and it could meet your requirements of what needs to be in the contract and you could sign off on it. So to say it is illegal, which you never actually said when Councilmember Yukimura asked you about whether it was illegal, you did not say "yes" or "no." You said that you just do not find any authority at this time. If the question was raised regarding authority, well then we would have to analyze for legality. I do not feel like we are getting clear answers and you keep using the word speculation. Which is it? Would it be illegal to approve funding or would it be illegal...I mean the contract that you speak of, that has not come to your desk for signature or approval, you do not know what form that will be. So what is the harm in us approving a grant to apply for, receive, and expend and believe me, we cannot expend it until we apply for it and receive it. There is steps there and time and delays. It has been delayed now forever and this seems like another delay. Why can we not vote today?

Mr. Castillo: That is a long question, by the way, but I will try to answer it. In terms of speculation and you mentioned that word.

Chair Furfaro: Excuse me. It is 11:00 and need to take a caption break. We are a little bit over the time for a caption break because we started at 8:45. So hold that thought and you will answer that when we come back.

There being no objections, the Council recessed at 11:00 a.m.

There Council reconvened at 11:12 a.m., and proceeded as follows:

Chair Furfaro: We are back in order from the recess and we had a question posed to the County Attorney before we take a break. Al, you have the floor.

Mr. Castillo: Council Chair, and Councilmembers, Al Castillo, County Attorney. Councilmember Kauli'i, the status right now of the facts that have been presented, basically, what I said earlier, you even have the Police Department that are not clear on the Program. I have been given information which I deem insufficient. What I am saying about speculation, I cannot speculate on how the Program will eventually be run. Based on that, I am giving you legal advice saying that right now for Keiki P.O.H.A.K.U., the information that I have is insufficient for me to say that there is any authority. I can only give you legal advice, and you can vote upon that legal advice that I give you.

Mr. Kauli'i: If the information is insufficient to say that it is legal, would it not also be insufficient for you to say that it is clearly illegal and we should not move forward? That is why I think your points about Councilmember Nakamura's question to approve and sign off as to form and legality you said that would be speculating and when the contract comes before you, then you could. What information is missing that leads you to not be able to say it is legal, but to be able to say it is illegal.

Mr. Castillo: Let me be clear then, with the information that I have, it is clearly not legal. The information, I cannot speculate often on what information is going to come forth, because I am not the proponent of the program.

Mr. Kauli'i: Can you say what makes it illegal? What information? You said with the information that I have, it's clearly illegal. But then earlier you said there was insufficient information for you to make decisions about signing off or not approving? I mean, we are talking about...

Mr. Castillo: I need to know how much.

Mr. Kauli'i: We are talking about approving the application, receipt and expenditure \$35,000.00, a grant for a pilot new Program.

Mr. Castillo: I hear you. I know what you are doing. We need more information about the entire Program, which I do not have. You are trying to have me create a Program, which is not my Program.

Chair Furfaro: I would be careful implying what Councilmembers are trying to do.

Mr. Castillo: I am sorry. I am a little confused by the question. I cannot create the Program. I can only opine on the Program that is being created.

Chair Furfaro: The answer right now is that you do not have enough information to make that opinion?

Mr. Castillo: To say that it is legal, yes.

Chair Furfaro: That is what I am hearing.



Mr. Castillo: Yes.

Mr. Kauli'i: I do not see any point in going further. Thank you,  
Mr. Chair.

Chair Furfaro: Are there any other questions for the County  
attorney? If not, Al, thank you.

Mr. Castillo: Thank you.

Chair Furfaro: Members, would you want someone else up from  
the Administration?

Ms. Yukimura: Mr. Chair, I would like to have the Mayor's  
Managing Director, please.

Chair Furfaro: Is Mr. Heu here? Good morning Gary.

GARY HEU, Managing Director: Gary Heu, Managing Director.

Ms. Yukimura: Gary, the Mayor a head of local Government under  
Federal grants being applied for here is given a lot of authority and attention in  
terms of the Mayor's Office in terms for coordination and being the spokesperson for  
local government on the issue of Federal Juvenile Justice grants. Have things been  
coordinated at the Mayor's level to ensure what is required under the plan or excuse  
me, under the Federal grant guidelines and law to have a coordinated system of  
juvenile justice?

Mr. Heu: Before I get into attempting to respond to that, first  
I would like to say that we have not seen the grant application or specific  
documentation for the Keiki P.O.H.A.K.U. Program. At this point in time I am not  
aware as to the specific source of funding that they are seeking. I am assuming  
from some of the discussion that I have heard, informally, it would be the JAV block  
grants, the Juvenile Accountability Block Grants, that are administered out of the  
Office of Youth Services. But I am assuming that since like I said, I have not seen  
any of the documentation. If you are speaking specifically to those grants, if we go  
down that road and say we are assuming that those are the grants that the request  
is to apply, receive and expend, yes, that the Mayor does have a role in that relative  
to those funds are routed from OIS to the Mayor's Office and ultimately to the  
Prosecutor's Office or wherever the grant request is coming from.

Ms. Yukimura: One of the concerns is how all of these different  
diversionary tracts, because I think there is total agreement, if I may, that  
Diversionary Programs are critical and important.

Mr. Heu: Absolutely.

Ms. Yukimura: But there are several diversion tracts right? Teen  
Court, Keiki P.O.H.A.K.U., if it is approved, Drug Court and a few others. How are  
the decisions being made about which is the proper track or alternative for the  
child? Who is making those decisions?

Mr. Heu: I cannot speak to Drug Court and I am not even  
sure if Drug Court receives JAV money.

Ms. Yukimura: Is there someone in your Administration who knows about this? It is the responsibility of the Mayor's, a head of local government to, I would think ensure that coordinated process.

Mr. Heu: I think what we are dealing with is if you look at historically at JAV funding, it has been used to provide funding for Teen Court and I know we are not here to talk about Teen Court. But if you want to talk...

Ms. Yukimura: As it is related, I believe it is fine. As it is related to Keiki P.O.H.A.K.U.

Mr. Heu: If we are talking about JAV funding and how those funds have historically been used, it is been for Teen Court. Teen Court is a well-established Program. I think that it has a proven track record of success. As far as the JAV funding on a reoccurring basis, there is really no need, I don't think, for much oversight out the Mayor's Office in terms of sustained funding.

Ms. Yukimura: That is not my question.

Mr. Heu: If we are talking about something different, which we may be relative to Keiki P.O.H.A.K.U. that is another story. We are not familiar with the Program and we have never received any kind of documentation about the Program in the Mayor's Office.

Ms. Yukimura: But you did not quite answer the question in terms of who is making sure that there is a coordinated system of diversion that meets the best interest of the child?

Mr. Heu: Well I think, again, if it is brought to our attention that, in fact, this Diversionary Program would be accessing the JAV funding, then obviously once the application was made with OIS and based on their approval and flowing those funds through the Mayor's Office, I guess that is where we would have the opportunity to weigh in on whether or not this is consistent and it is a program that is well-established and managed and within the confines of the Charter or the Code. But not having that information, Vice Chair, makes it difficult for us to weigh in.

Ms. Yukimura: But is it not your responsibility to get that information? Why would we do it at the end? It is the County Attorney's Office or the Mayor's Office make everybody go through this whole process of application and everything and then say that something is wrong? I believe actually that the Federal law requires that there be an upfront coordination and an upfront plan and that any proposed grant has to show it is part of implementing the plan.

Mr. Heu: Yes. I believe the Federal guidelines provides that a Committee needs to be established.

Ms. Yukimura: Well, there is a Committee established.

Mr. Heu: Okay.

Ms. Yukimura: But where is the plan that Committee uses to judge which grant should go forward, which should not or how they should be changed, and which Agency would do which part of the plan?

Mr. Heu: That might be a question better posed to an official out of Office of Youth Services. However, to your previous question, I would say yes, the Mayor's Office has a certain level of responsibility. But I think that Agencies that are initiating programs and are going to seek funding have a responsibility to communicate with the Mayor's Office, so that we know that this is out there. Like I said today, sitting here, I do not know. Maybe you folks can tell me if, in fact, the funding that has been sought is truly the JAV funds because that has not been communicated to us.

Ms. Yukimura: It is I think. I believe Councilmember Nakamura can confirm that she asked the Office of Youth Services whether there was a plan.

Chair Furfaro: Let me recognize her. I want to make sure from the Administration, your response to that question is perhaps we can answer it?

Mr. Heu: Yes, well we have seen nothing.

Chair Furfaro: You have received nothing?

Mr. Heu: We have received nothing relative to Keiki P.O.H.A.K.U. and any requests being made of the JAV funding, for JAV funding through OIS.

Ms. Yukimura: Just one...

Chair Furfaro: Before I recognize her, you have turned over your seat with that last question. We get about \$10,000.00 for certain funding programs that we earmarked for Teen Court.

Mr. Heu: Are you talking about general funds?

Chair Furfaro: General funds, right?

Mr. Heu: Right.

Chair Furfaro: We have another \$19,000.00 that comes into the County from the judicial piece.

Mr. Heu: If we are talking about Teen Court, I believe that...and the Prosecutor's Office is probably in a better position to answer this question, but I believe that they have \$14,000.00 or \$15,000.00 that had been approved and allocated from Office of Youth Services for current year, for use for Teen Court.

Chair Furfaro: Maybe you are right and I am wrong. That is fine just in general. But we used to get the amounts closer to \$60,000.00.

Mr. Heu: Now we are reaching back into history and I am not sure if I am the right person to speak to that, but my understanding is that there was a time where Teen Court was fully funded out the State Judiciary.

Chair Furfaro: Councilwoman, you heard the comment from the Administration that perhaps we can answer that question, you have the floor.

Ms. Nakamura: I did send the Office of Youth Services, David Hipp, a letter just a question asking who is responsible for the plan that is required by the State grant? He said that it is not the State, they leave it up to the Counties. That was the question that you wanted to know? I believe, the role of the coalition to come up with the plan that then becomes the framework for the use of those funds. My read of the minutes of the coalition's work is that...I do not know whether that was done.

Chair Furfaro: To disclose, I have a similar piece of correspondence and basically the response that they favor both Programs. But it really seemed to boil down to that they do not have funds to contribute more or less, especially since the 2008 reduction in funds.

Ms. Nakamura: The question is that we are at this stage where we have gone three (3) meetings on this agenda. Gary, I know that there is a lot of frustration because of the time that it take diverted from a lot of and resources for this discussion when back in April there was an unsolicited opinion from the County Attorney's to the Prosecutor's Office, saying that these Diversionary Programs were not in accordance with the County Charter. But a notice for professional services contract was issued by the Administration. The item was placed on this Council's agenda and for three (3) meetings and only today are we getting that feedback from the County Attorneys and I am just wondering why could this not have been at least flagged early on, rather than have this body go through this 10.5 hours, now much longer, discussion.

Chair Furfaro: It is twelve and a half hours.

Ms. Nakamura: Twelve and a half hours, thank you.

Mr. Heu: I think it is a reasonable question. I think we all deal with probably on a daily basis are the proper questions being...I mean, we get answers to questions all the time, but are we asking the right questions?

Ms. Nakamura: Especially in light of what the issues raised with the adult P.O.H.A.K.U. this was not new to the Administration. We did not know about that opinion until the Prosecuting Attorney brought that up and yet here we are months into this deal. Why was the process moved ahead knowing that there were issues? Who should have been looking at that big picture?

Mr. Heu: I mean, again, that is a fair question. But I do not have an answer to that relative to the procurement aspect of this.

Mr. Rapozo: Gary, thank you for being here. The Mayor's Anti-Crime Task Force met on this, correct?

Mr. Heu: I know I have heard discussion on the floor that the Mayor's Anti-Crime Task Force supported Keiki P.O.H.A.K.U. I have gone back and talked to George Costa, who facilitates those meetings and he said that the discussion that they have over the past...I do not know if it is been a year or so, has been in regards to the P.O.H.A.K.U. Program and there was discussion among

members and there seemed to be support for the P.O.H.A.K.U. Program. I asked him specifically about any kind of support that have been shown by the Task Force for the Keiki P.O.H.A.K.U. Program and he said that had not been discussed. With that being said, this is second hand...

Mr. Rapozo: Gary, maybe you should go talk to some other members like Teresa Koki, and others that participate as well. I have not spoken to George, but I have spoken to others that were at that meeting that did discuss this Keiki P.O.H.A.K.U. Program and who did verify and validate to me it was unanimously supported. I do not know if George...

Mr. Heu: Again, I heard discussion on the floor and there seemed to be discussion about coming from the Mayor's Anti-Crime Task Force, and then there was the other Committee...

Mr. Rapozo: The other Committee that is required by the State...

Mr. Heu: Right and it seemed like some of the discussion was getting confused.

Mr. Rapozo: Rather than getting secondhand information, I spoke to specific members of the Committee, who validated what was stated. I am comfortable that, in fact, both Committees heard it and approved it. The other thing and this is what is baffling me to no end is today we have 1.9 million dollars in grants up on this agenda. Federal grants, all kinds of grants, for different Departments. Is the Mayor and is the Administration aware of the \$970,000.00 for Wastewater and who is going to be turning the screws and who is going to be driving the truck and all of that?

Mr. Heu: Are you talking about the EPA grant?

Mr. Rapozo: Correct. Are you intimate with what will happen with that grant?

Mr. Heu: I know in general terms.

Mr. Rapozo: I understand that and \$100,000.00 force for Public Works who will be doing recycling, do we know who is going to be the ultimate provider for that service?

Mr. Heu: You mean the electronic recycling?

Mr. Rapozo: Yes.

Mr. Heu: I know the functions and I understand the intent of the grant is.

Mr. Rapozo: I understand and do you see that I am trying to do the comparisons here. The Administration is coming to us for this money to do this E-Recycling Program and I hope and pray to the Lord above that we are not going to get the same questions about who is going to provide the service. Who is going to determine what is going to be picked up, what kind of trucks will they use? But that is not what is going to happen because it doesn't involve Keiki P.O.H.A.K.U.

JoAnn asked about the job of the Mayor's Administration that should know all about this. Do you know about \$359,925.00 grant for Civil Defense and exactly what they will do with the money. We are told it is to prevent, deter and respond and recover. But do you folks have intimate knowledge of where it is going to go and who is going to be doing it? Can you sit here today and tell me that you do?

Mr. Heu: Today, I could not tell you where every cent is.

Mr. Rapozo: I am trying to get a consistent review of all grants and this one, I think we have identified the theory. I think we have identified the concept. I think we have identified the fact that it is going to be put out to bid, that some outside agency is going to be running the Program. I mean I think that has been stated probably a dozen times through the last twelve (12) hours or so. We keep asking the same questions hoping to get a different answer and we are wasting our time. I wanted to verify and make sure that we are not treating this one differently. Today we have almost two million in grants and I will be waiting for the questions because some of them are very huge. Thank you.

Mr. Heu: Councilmember, before I step away from the microphone, I just want to go back to the issue of the Mayor's Anti-Crime Task Force, and their endorsement of Keiki P.O.H.A.K.U. I would encourage you folks if there is a question to get George Costa over here to give you that firsthand information. He conducts those meetings, he facilitates, and it is his Office that does the minutes for those meetings and has them distributed. Clearly, I asked him the straight-up question about their endorsement of Keiki P.O.H.A.K.U. and he said they did not.

Mr. Rapozo: Gary, for me I am not going to be calling him. I spoke to three (3) others and I do not believe those three others would lie to me, I have to believe my first hand research as provided. I will not ask for George, but I am sure somebody else will though.

Ms. Yukimura: Gary, you may not know the questions about the sewer grant that is on the agenda right now, but your department head Ed Tschupp does know the answers, does he not?

Mr. Heu: Larry Dill does, Ed Tschupp, absolutely will.

Ms. Yukimura: When they have come before us and we have asked them questions they have answered us fully. That is why we may not ask on subsequent grants. The other thing is that in the coalition, you say your Office has not received information, but it is my understanding that the head of Life's Choices Office has been part of the coalition.

Mr. Heu: Theresa Koki, I believe, sits on that Committee.

Ms. Yukimura: In some respect your Office has received some information and I guess I am asking because it is a JAV grant and the requirement is for a plan and recognizes the Mayor's Office as the head of the local government. It seems to me to be the responsibility of the Mayor to facilitate the coordination in terms of the grants and the monies that need to be dispersed.

Mr. Heu: Again, Vice Chair, I am going to go back to what I original said which was that the JAV funding has historically year over year has

been used to support Teen Court. There is between \$14,000.00 and \$15,000.00 sitting currently with O.P.A. for the use for Teen Court. This is the first that we have heard of a Program other than Teen Court requesting funding through JAV.

Ms. Yukimura: When you say there is \$14,000.00 sitting in the Office of the Prosecuting Attorney, it is my understanding that the contract with between the Teen Court and County expired September 30, 2012.

Mr. Heu: That is my understanding also. However, I believe that in order receive that funding, the Office of the Prosecuting Attorney entered into a contract with O.I.S. which basically provides the \$14,000.00 to O.P.A. for use by Teen Court.

Ms. Yukimura: Alright.

Mr. Heu: That is a separate contract.

Ms. Yukimura: Alright.

Mr. Heu: I believe that contract runs through the end of the this calendar year.

Ms. Yukimura: And the contract exists?

Mr. Heu: My understanding and again, that is a question better posed to O.P.A., but my understanding is that there is currently a contract between the Office of the Prosecuting Attorney and the Office of Youth Services.

Ms. Yukimura: Thank you.

Chair Furfaro: Members, I do want to share with you that I would like to get to a point where either you are supporting this or you are not supporting this and we move on. Gary, I do want to say that looking even as far back as the June Charter Review Commission and I have the notes here. We have members of the Charter Review Commission headed by Pat's staff, we had Deputy County Attorney's there, and all the Board and Commission Officers, except for Jan Tanrubicate, who was absent that day and support clerks from Barbara Davis to Paula Morikami and this was going back since June. Especially when it comes to the JAV grants, the fact of the matter is that that authority is with the Administration. I feel and I am just saying as someone who tries to work very closely with the Administration, I am just kind of feeling that this thing has been pushed onto us and some of the controls were really at the Administration level. I am feeling like it's been pushed to the Council and there were things that you should or shouldn't have known within the Administration of the track this was taking. Obviously, some of the involvement by the county Attorney's Office, because we have attorneys present at the minutes that are supporting the Charter Review Commission. I sent my questions over to Al, with other discussions. I have indicated for \$35,000.00 there isn't the kind of risk that we are talking about here to launch the program. Last week I voted yes to support pursuing that grant and as I mentioned earlier about leadership, this is about a vision trying to help some of our young people and divert them away from the courts. That is what it is all about and the fact that committee was established, which is required by the Feds, they are by Committee. I do not know many animals that are formed with Committee that everyone on the Committee agrees, you know? It is like a camel, some of them have

one hump, some of them have two humps. But they are still camels. This business to me is really focused on launching a Program that we can measure going forward for the application of a \$35,000.00 grant. But I am quite sure that things that I have participated in whether it is young leadership roles through being the founding Director of Leadership Kaua'i, there are some hard times in the beginning, but I certainly feel that this has kind of dragged out long enough and for the amount of risk I do not see why I could not move it forward and then also have discussion with the County Attorney about some bigger issues that we have including the way we divert grant monies and so forth through many of the Departments in the County. To me it is just opened up a lot more questions. I do want to share that we do not have the kind of oversight and, in fact by Charter, this Council is restricted in getting involved with your Administration on directing things to happen. I mean that is a clear restriction in the Charter. I want to thank you for your commentary and so forth and I would encourage, as the bigger question is grant applications and Diversion Programs that I sent over to the County Attorney. I would really appreciate if you guys could participate in that discussion. I think that there is a lot at risk there.

Mr. Heu: Depending on how the County Attorney opines on that, I think we have an interest and concerns also. What I would say is relative to today's agenda item, I mean, I appreciate you folks letting me participate in the discussion, but it is very difficult because there is a lot of "new information" that is kind of floating out there. I heard the County Attorney provide an opinion to you earlier, but in addition to that I cannot sit here right now and tell you how your vote on Keiki P.O.H.A.K.U. impacts Teen Court or if it does. I do not know that. We cannot make that kind of assessment without having additional information and again, I appreciate your confirming that Keiki P.O.H.A.K.U. is attempting to access JAV funding, which is the same source of funding for Teen Court.

Chair Furfaro: But in our minds I want to make sure that we are clear to me, the State reduced funding for Teen Court by almost \$60,000.00. Hale'Opio has been the agent that has done our Teen Court for us. To me, at the bottom line, if we are serious about our sense of place and 'ohana, on the hearings on the 17<sup>th</sup> if we have to step up with a money bill for Teen Court, for Hale'Opio, I am willing to do it because the value is about our people and our community. The challenges that we have out there right now as we have heard from Mr. Brun. Next week I am quite familiar with saying here is some of the money that we have to replace for Teen Court. We stepped to the plate with the koki frog because we could not get any money for the State. We have stepped up to the plate on funding a number of items including the bill that Mr. Rapozo and I put out regarding the bouquet odors on the West side from the milk weed, State did not fund that, we put money in there because it is the right thing to do. That is all I want to say. I appreciate you guys coming over, but I would like to let you know that I do not agree that these decisions should have been in the Administration and not pushed to us. I am a friend of the Administration and I work closely with you, but I think it needed to be said. That is where I am going with my vote. Thank you Mr. Heu, thank you very much.

Mr. Heu: Thank you.

There being no objection, the meeting was called back to order, and proceeded as follows:



Chair Furfaro: It is ten to noon and we have a full agenda yet before us. We have an opportunity to give our sincere mahalos to Senator Akaka today since he is coming to Kaua'i this evening. I am now open for some discussion.

Mr. Rapozo moved to approve C 2012-336, seconded by Mr. Kualii.

Chair Furfaro: Mr. Chang, I will recognize you first?

Mr. Chang: I believe we have deliberated this item for many, many hours and one of my questions was last week the vote 3:2 in favor and had we had another Councilmember, the possibility of it going 4:2 would have passed this issue last week. Today there was new information, however, this information would not have been valid if this was passed last week if we had the four (4) votes. The P.O.H.A.K.U. Program stands for Productive Optimism Helps All Kaua'i Unite and Kaua'i needs to unite as kupuna, as our adults, and the keiki that is that what you call uniting everybody together as a people. There was one thing I was not aware of that I think is very important that was not brought up today. The fact that for the children if for any reason that they get one bum rap and there is no additional Diversion Program that they can fit into, we have all identified that you might not be able to fit in one, but there may be another. To me have to have a record that would reflect not being able to join or at least apply for the military is to me a disservice for this entire country. When you get into the military, I think you grew up really quickly. We talked about a drill sergeant yelling at you, believe me, if you need to get disciplined and, by the way, I have no military service, but I just know that you would respect the drill sergeant and not only do you get stronger, but you grow up and get discipline and become a proud American. At that particular point you know what America is like and what it is like to be an American and serve our country. I have all respect for all military that have served our Country. I think everybody knows that. Officer Ponce talked about the very successful P.O.I. Program and for the viewing audience, having to have a violator have to write an apology letter, can you imagine what it would feel like if you are the one who were the victim to get an apology letter? To me that is huge, it is not an email this is not someone saying I apologize. Instead it is a letter from somebody that I believe will feel that it is sincere. They want that chance. Coupled with community essays and community service or even watching an adult criminal proceeding, as child you made a mistake, but if you want to get heavy duty and talk about scared straight, I think it will be to be able to witness an adult -- a really heavy-duty adult. I think would really scare people and just to have that service of cleaning yards for the elderly. That is like the good old days when you made a nickel to lawn your neighbor's yard. I think that kind of program is great. The one that hit me the most and I want to thank Officer Ponce, is the Productive Optimism Helps All Kaua'i Unite. The P.O.H.A.K.U. Program instills the Hawaiian values and the real roots of what we're doing and trying to accomplish. Many of us have been in the lo'i patches. If you haven't then I would recommend that everyone get in the lo'i patches. The minute you get into the patch you know you are stepping into something foreign because it does not feel right. But when you work in the patches, any farmer can tell you, within the sun, the rain, the snails, the birds, the invasive species, flooding, drought, I think you grew up quickly because when you know about the root, you have that family value that everyone will tell you about. You get all the little shoots, the keiki coming out and that is very important for education as far as what we talked about the Hawaiian values and Kaua'ian values that we want to instill to our youth. We talked about how difficult it is to be a kid and I said it many times. I wish I was a parent, I am not but I know it is extremely difficult to be a child. I would not know how to be a kid these day but I believe it's

equally difficult for the parents, the grandparents and extended family in this day and age. I feel this program is equally important to our youth as it is for the residents and parents of Kaua'i. I want to say lastly the Office of the Prosecuting Attorney, with all of this scrutiny and everything under a microscope, now it is their kuleana and I believe that they are ready and confident and I believe that they are able to move this forward...I think we all need to help them get started, because in the long run we are all going to benefit from this Program. Thank you very much.

Mr. Rapozo: Obviously I will be supporting this and I wish that we would have supported this a while back. We have lost funds because of all of the delays, it was a \$65,000.00 grant and it has dwindled down, which I apologize for because it was this body. I know there was a lot of talk about the Mayor's Office and the County Attorney's Office but it is here and we make the decision and I believe in it case we took way too long for reasons that I think were fabricated. This body and I speak as the body of how my perception is, we were looking for reasons to say "no". We were digging up reasons to say "no, we cannot support that." That is what it is and it did not stop. When one question got answered another one came flying. When that response was not wanted another one came. We brought up County Attorneys and Administrative Assistants today. We never brought up the Prosecutor's Office and that is pretty interesting, do you not think? They are requesting it but you think anybody had a question for them...Of course not, because we were not looking for the answers that they had. We were looking for the answers to down this Program, that is a shame. A lot has been talked and I do not read the blogs a lot, but I did because someone said Mel your name is it, and I saw the trash being printed about promotional materials. All of this wasted money and I just had our staff today just go run around our Office and see what the Office of Elderly Affairs does, what County Housing does, what the Police Department does, what the Fire Department does, and what the Holo Holo 2020 does. The Mayor's Program, loads up the Department Heads in a County bus paid by your money, drives all over the island to have promotional meetings for Holo Holo 2020 and nobody complains about that, but if it is coming from O.P.A., it is wrong; your shirts, your bags, all of that stuff. Part of a pilot project is marketing. Getting the kids, their families, the probation officers and the judicial systems to understand that there is another option. You are not going to do that without promotional materials. It is like evil sin and yet everywhere you go in the County, a paperclip holders and magnets and we have shirts but nobody questions that and that is all budgeted. Today we have, as I talked to Gary Heu about...we have \$970,000.00 for Wastewater and up to \$100,000.00 for recycling for collections, education, outreach and reporting activities. I wonder if we are going scrutinize that and try to get the answers that we tried to get out of O.P.A. for that since it is unknown. I do not know they are going to hire and I do not know if they have the express authority in the Charter to do recycling. I do not know. I read the Charter and it says we take your trash and could recycling be part of trash? Yes. It says the Prosecutor is tasked with prosecution, is Diversion Programs part of prosecution? I believe so. You have a case and decide how you are going to prosecute. Is that my five minutes? Somebody else is trying to cut me off. It is part of prosecution. It is the total package, if in fact you can do...If we are going to dissect the Charter on every single grant we have and use that rationale and to say that Teen Court because it happened a long time ago is different from today, no that simply does not fly with me. Remember in this case we have dueling Attorneys opinions and what the public may not know and that is where I was going to call up the Prosecutor's Office, but Mr. Chair, I respect the time that we have been battling this so long. Gary Slovin, was hired and I do not care what anybody says or what the blogs say and I am sure that the Prosecutor's Office is here and will release the document, if

you ask. He was hired to act in the capacity of the Deputy County attorney for County of Kaua'i, to represent them. His opinion in my opinion is on equal plane as Mr. Castillo's opinion. I just happen to agree with Slovin's. That is the reason for my vote today, because I believe that is the more practical application of this whole process. You have to have diversion, where is it going to come from? Do you get a committee in the public to say who is going to Keiki P.O.H.A.K.U.? You are going to expose your files of this poor kids criminal background? You cannot do that. The only office that can do that I the Prosecutor's Office. The Police Department does not have the authority to do that, there is only one entity that prosecutes and deals with plea bargains and diversion. To think that it belongs somewhere else is ridiculous in my opinion. I am not a lawyer...but I have been in this law enforcement industry all my adult life, starting when I was nineteen (19) years old, about ten (10) years ago.

Chair Furfaro: Councilmember Rapozo, your five (5) minutes are up. I owe you at least twelve (12) seconds and I will let you summarize.

Mr. Rapozo: I beg my colleagues to support this today. We need unanimous vote on this to send a message to the community, like we did with PLDC, we heard from the community, we appreciate your input and let us get some kids fixed. Thank you.

Mr. Kualii: I do not think I need five (5) minutes. I just wanted to say mahalo to everyone who has participated in this rather drawn out process. But your testimony and support, I think, has finally perhaps got us to the place where we can hopefully support this unanimously. I apologize for not being here last week, I would have supported it then and it would have been over and we would not have to be here today, but I was at the annual Native Hawaiian Convention, which I am committed to participate in each year. I really appreciate the testimony of our Arthur Brun, you touched my heart and got me choked up, so I was not able to thank you. But I wanted to say mahalo. Dr. Ka-ni Blackwell, when you talk about social justice, to me there are a lot of young people who do not have the resources to get high-powered attorneys who need that support and that second chance. Our families, our neighbors, you know? So it's just sad that we cannot even get this going with a \$35,000.00 grant, but I am hopeful that we will do that today. I really appreciate the approach and the wisdom to utilize the power of our Hawaiian culture and the power of our Hawaiian values. Aloha, kuleana, malama 'āina, love for each other, being responsible for oneself, for each other and for the community, malama 'āina: taking care of our land. There is so much power in people and in the aloha that they can share and in teaching. Dr. Ka-ni talked about education as the key and education happens from one person to another. How about from kupuna, the love and aloha that they have... The mana and the power of the power of people and also of places. We live in such a special place in Hawai'i and like other Councilmembers have said, when you get the chance to get into the lo'i and work and feel. I know firsthand since I come from a family of taro farmers and salt makers there is just a power in this place that is healing and helpful. I just see all the potential, this is just the start of something. We can go to a place that is really powerful, really healing and really helpful and I am really excited about getting this started. I am more than prepared to support this today and I hope we will all be able to do that. Thank you, Mr. Chair.

Ms. Yukimura: Thank you to all who have come here today and before. I first want to clear one thing about the Kaua'i Marathon, which majority of the Council passes, and when I voted for it, it was about the children of the families

of the visitor industry workers so that they could have full workweeks. We can do this in subsequent years, because we want to put Kaua'i on the map. Now you can disagree with whether that happens or not, but I want you to know that is part of my motivation. As to the Keiki P.O.H.A.K.U. Program as Dr. B. said all of us are in favor of supporting our youth and Diversion Programs are very important. Arthur Bruin's story is a graphic example of why diversion programs are needed. I grew up with these stories because my father was a probation officer in the family court before he retired and my mother worked with the Mental Health Children's team so I have been involved with people like this all my life. It is true we need different sizes, like Tina said, different kinds of programs for different kids with different needs. That is why there is a concern that Teen Court also will be able to operate because it's an evidence-based program that has helped many young people. Our concern is how to have this great diversity of Diversion Programs and how to make it work all together? I have to say that the track record and past performance of the Office of the Prosecuting Attorney's has been poor and raised questions about the capacity of O.P.A. to design and implement good programs. Dr. B. said it was unfortunate that P.O.H.A.K.U. was terminated. It was terminated because it was stopped in its tracks and is under investigation and community service in P.O.H.A.K.U. sounds like a good idea, but it was canceled for many of the offenders who were in the Program. P.O.H.A.K.U. did not have a chance because the administration of it was not done properly and that and that is what my questions have been directed to, the design and implementation of the programs. It is about accountability and I know it is been said there is little risk with \$35,000.00. I believe P.O.H.A.K.U. funding was about \$40,000.00. Well, we have had to authorize another \$35,000.00 to defend the County against problems stemming from the P.O.H.A.K.U. Project. We have had to pay out over \$200,000.00 for the mismanagement of personnel in the Office of the Prosecuting Attorney. Amount is small...

Chair Furfaro: Excuse me, let me caution you on your choices of describing that.

Ms. Yukimura: Everything I have said is public information, I have checked it out Chair.

Chair Furfaro: Quiet in the gallery. I understand it is public information but I am trying to connect it to Keiki P.O.H.A.K.U.

Ms. Yukimura: I feel like I have tied it.

Chair Furfaro: Please take my guidance on that, you have the floor.

Ms. Yukimura: Thank you. The amount may be small and it may be minor, but the kids are not. The young people are not and how they will be diverted, how they will be supervised, how the County will be protected against liability? This is very important and this is where my questions have been directed. They have been very similar to the questions that I have asked about road repair, solid waste, and all of those issues that is what this is all about. Many in the public have my concerns. But they are afraid to speak up, because if they speak up, then they are attacked personally, just as I have been today. It's a difficult thing to speak up but I feel that my oath in office requires that I do that. I do not think that the Keiki P.O.H.A.K.U. Program as proposed has been sufficiently described and I do not feel that the past track record of O.P.A. supports approval of this program.

Ms. Nakamura: When all of this started, there were lawsuits, there were claims and there was a pattern from this agency and so I felt it was my fiduciary responsibility to scrutinize this request before the Council and I thought that is would be irresponsible to do otherwise, that is why I have been asking a lot of questions. It has also been troubling that in reviewing all of the past minutes which we were able to get a hold of from the Kaua'i Juvenile Crime Prevention Coalition, that we learned that the coalition is supposed to meet regularly, but had not met between November 15, 2011 and September 12, 2012, a period of ten months. The coalition has not developed this coordinated plan that lays out a roadmap of how we are going to use these federal funds that we are allotted. The State Office of Youth Services confirmed that yes, that is the role of the county through this coalition. It was only after this item was on and presented to the Council that the coalition met to discuss Keiki P.O.H.A.K.U. It was about a month after it was originally placed on this agenda that the meeting finally took place and that they did agree to move forward on this issue. When we started asking some questions about were procedures followed, did this collaboration take place? It did raise issues for me in this process, and I want to thank the Office of the Prosecuting Attorney because they briefed me yesterday on the details of this program that I did not get out of this forum. I am sorry, it just did not happen. I want to thank you for describing the program design and intention and I wish the public had this opportunity to hear about it. Unfortunately, we could not ask questions during our budget process. I did not believe that this forum really helped me to understand it. My feeling is that this is a start, but there is a need to bring the stakeholders together, to really look at a long-term solution and system for looking at juveniles and just the whole area of preventing this in the first place. The problem that I have is today getting the opinion from the County Attorney that says that the Charter does not grant the Prosecuting Attorney the express authority to establish fund and/or coordinate a Diversionary Program. I am elected to uphold the Charter. I took a close look at the 2007 Supreme Court opinion that basically said that Peter Carlisle in Honolulu, the Prosecutor's Office could not do things outside of the express language of the Charter. So what Peter Carlisle did was he went and changed the Charter because it was a State Supreme Court unanimous opinion. I believe that is what this County opinion that we received this morning that I will hope that this Council will release to the public at some point and I will ask that we put that on the agenda. It basically relies on this opinion and says that the Supreme Court narrowly defines the role of Prosecuting Attorney based on what is in the Charter. That is my conflict today and I think I have gotten resolved on the program issues and that this is a start, but I am hung up because of this issue. I will not be able to support this request.

Chair Furfaro: Well, I guess it is my turn to speak and I do want to say that I have been on the County Council long enough to know that I want to see the County Attorney's opinion in writing and that is coming forward October 17<sup>th</sup>. I can live with whatever Attorney's opinion there is and would like to find myself on being able to focus on the particular impacts that that opinion will have on the way we do business and the fact of the matter if we need to make a Charter change, that he with expedite it, just like Peter Carlisle did. But now let us get back to what we are looking at today and I would certainly hope my comments to the Administration about evaluating, measuring these new programs be it based on risk, and that we might experiment and take these risks sometimes for the benefit of things that will work in our community. It is very important to all of us here. I also want to say I think all of the members of this Council, and I want this to be very clear in my interpretation of what I heard today. Many of them are very supportive of what these benefits will be and just want to find the fact that there is a level of

accountability, there is a level of involvement from the administration. Everyone here passionately is concerned with the issues in our community. I also want to make sure that I had to read some of the rules today and so forth to make sure that you understand when you challenge members of Council and so forth, that is not really allowable in the sense of living aloha and I am sorry today aloha isn't always delivering the good news. It is also being truthful and deliver something of the conflicting news. But it is out in the open and it just makes a better sense of compassion, I think, that Mr. Kualii has expressed today. It creates a better spirit of community and I think right now some of the programs that we need to support are programs that will help our young people. It is tough to be young today, it is tough. I had brothers who were prosecutors. I have grown up in a community on the Leeward coast of O'ahu and there were challenges everyday then. I am in my mid-sixties now as of today and I also learned that they were apologetic to me about my hair turning gray. Well you have that one wrong, I'm losing my hair over these things, folks. This first and foremost today is about our community, secondly we need to get some of those things clarified, so we have a solid understanding of the parameters in our Charter. But my reasons to vote yes is exactly that. It is about our young people, that is the end of business for me today. I will be voting yes.

The motion to approve C 2012-336 was then put, and carried by the following vote:

FOR APPROVAL: Chang, Kualii, Rapozo, Furfaro  
AGAINST APPROVAL: Nakamura, Yukimura  
EXCUSED & NOT VOTING: Bynum

TOTAL-4,  
TOTAL-2,  
TOTAL-0.

Chair Furfaro: On that note on that note, Councilmembers we are going to go to a specific item dealing with wastewater on the West side. I would like to make note to the audience, if you are going to have conversations, please carry it out outside, because I'm going to extend our lunch hour until quarter to 1:00, so we can address the wastewater system. Thank you everyone, Mr. Clerk, could I have the item that I requested to be read next please.

There being no objections, C 202-375 was taken out of order..

C 2012-375 Communication (08/21/2012) from the Chief of Wastewater Division, requesting Council approval to apply for, receive, and expend Federal Environmental Protection Agency (EPA) grant funds in the amount of \$970,000.00, with a 45% local (County in-kind) and 55% Federal match, for final design and construction following completion of the NEPA document, and planning and preliminary design work for the Waimea Wastewater Treatment Plant Expansion R-1 Distribution System: Mr. Chang moved to approve C 2012-375, seconded by Mr. Kualii.

Chair Furfaro: Ed, thank you for being here Director of Engineering for Wastewater, and Mr. Dill, the County Engineer. Ed, could you give us a little overview of the Program.

There being no objections, the rules were suspended.

EDWARD TSCHUPP, Chief of Wastewater: Good afternoon, for the record Edward Tschupp, Chief of Wastewater Management Division. I am happy to be here requesting approval to receive and expend this grant opportunity. The grant opportunity was congressionally appropriated funds in the 2010 fiscal budget and they were appropriated up to \$970,000.00 for the purposes of improvements in



Waimea. This is a separate project from our Waimea Wastewater Plant expansion, but it dovetails on that. We were notified by EPA, that is the process, the grant application process goes through EPA and so it's a grant being administered by EPA through their processes. It starts out with them sending us a letter basically saying congratulations, you have got an appropriation, come in with an application, a work plan and they have got a whole list of activities that we needed to do. Fundamentally, including developing the scope of the proposed project and then submitting that and having discussions with EPA about how does this all pencil out and is this going to work out? We have been back and forth with EPA over a period of several months now to try to refine the work plan and get it to the point where EPA is ready to bless it and we are now at that point. Basically, I do not want to go into or I am willing to, but I do not know how much detail you want on the actual project. The version of the work plan is not quite the final plan, but it is close. It was attached to our correspondence along with EPA saying "congratulations, come in and apply." We are basically...it is the system, it is the preliminary study and an environmental assessment type of activities that will lead to working together with the community. There has been a lot of support from community members, Kukui'ula Land Company and others for this project. I think that there is a lot of nice interactions because this is basically about getting the R-1 water from the plant to users including County parks. There is a potential for a turnout from the existing line actually over to the existing ball field that would not be a very large construction cost element, and potentially State hospital, the schools, as well as landscape irrigation. We have spent a fair amount of time working with Kukui'ula land to figure out what makes sense and I think we have a good system laid out now. What we are hoping to do is proceed with the rollout of the capital improvements that will make that vision of sustainable reuse of high-quality wastewater for irrigation purposes for the community. That is the general parameters and I am certainly willing to answer any specific questions.

Chair Furfaro: Ed, first of all, this grant, \$970,000.00 will represent 55% of the project?

Mr. Tschupp: What is the appropriation from Congress was the \$970,000.00. I think that the total project costs will end up being around three million dollars. What EPA can award to us at this time, they cannot go beyond the preliminary engineering leading up to an Environmental Assessment. This is sort of Phase 1 to get us the preliminary engineering and Environmental Assessment and we...in putting together the scope and estimating the costs of that, I came up with a \$465,000.00 approximately scope of services needed to get to the Environmental Assessment. Of that, EPA can go with 55% you so the award would be for 55% of the \$465,000.00 and the remainder could be County funds that could include in-service staff kind of funds. I have provided an estimate to EPA of what we think those staffing costs would be. For the construction this is the kind of project that our State Revolving Fund Program really likes. Actually the Health department, who administers that SRF Program has indicated a considerable amount of interest. We have not gone to them yet with an application yet, because although we are on the list with them, we need to do the preliminary engineering for the SRF funding and I will remind you that the SRF funding has been coming in at .75% interest over a twenty (20) year period. In fact there may even be some additional grant opportunities there. We believe that we have got adequate matching funds within our facilities reserve, charged to cover any of the soft costs or non-soft costs that would be involved in the County match for this first phase.

Chair Furfaro: I am glad to hear that you have that confidence in this is the type of project that they really like reviewing. The only other piece that I want to affirm, that this R-1 water is an upgrade from obviously R-2, but the reality is this can be used with little restrictions on irrigations surfaces?

Mr. Tschupp: That is correct.

Ms. Nakamura: Thank you for that presentation and for being here. I wanted to ask you, of the \$970,000.00 you are asking for \$465,000.00 for preliminary planning and engineering?

Mr. Tschupp: That is correct.

Ms. Nakamura: So the balance of the federal funds, the \$505,000.00, would that go towards construction?

Mr. Tschupp: First, I need to correct you. What we are actually asking for at this time in this application process is 55% of \$465,000.00. It works out to \$260,000.00 of the allocated \$970,000.00 and the remaining balance would be \$700,000.00.

Ms. Nakamura: Could that be applied towards the next phase?

Mr. Tschupp: The caveat here is that its always possible that the Feds will take away the money. It is incumbent upon us to move forward as quickly as we can so that we can get the preliminary engineering and the environmental assessment and still have the remaining funds to come in for a subsequent grant application for construction. Then if all goes well on that path, that approximately \$700,000.00 would be available for construction funds, but they cannot allocate those construction funds until the environmental documents are completed.

Ms. Nakamura: How much potable water to do you expect this to free up?

Mr. Tschupp: It should be pretty close to gallon for gallon. If we put one hundred thousand gallons of water a day of R-1 water onto the parks and schools, then the current water...actually, I have to walk back for a minute because the current -- for example, the parks may not be watering, as much as they would like to. I cannot say it would be one for one when I think it through a little bit more. But you know, if it's half for one, then we are freeing up fifty thousand gallons day, for example, in that hundred thousand gallon and the irrigation is better.

Ms. Nakamura: Then you are coordinating with the Water Department of when that water will be freed up?

Mr. Tschupp: Actually we are working...we have not really made arrangements directly with the Water Department because we are pretty early in this process. I believe that they would be very supportive. I have not talked to David Craddick specifically about this. But I would emphasize that our integration right now is much more with the users and people like Kukui'ula Land Company.

Ms. Nakamura: Just for all the things that this project represents, our environment, reusing wastewater, keeping our open space and parks green, and



just efficiently using our resources, I think on a lot of levels it makes a lot of sense and I am glad you are pursuing it.

Mr. Tschupp: Thank you.

Ms. Yukimura: Thank you. I agree that this is the way of the future and it is good to see that our Wastewater Division is leading the way working with the community. Thank you for the work in doing this. My question is what is your system for prioritization of use of the R-1 water?

Mr. Tschupp: We are new to that business and so far the R-1 water that we have available is from the Līhu'e plant and that is under long-term contract with Kaua'i Lagoons Resort...we do not meet the full allocation that Kaua'i Lagoons worked with us on the R-1 upgrades there. Right now we basically have one customer for R-1 water and is that Kaua'i Lagoons Golf Course. In Waimea, when we go live with the R-1 water, we absolutely want...I have not established an allocation procedure. I would think right now we can deliver with reasonable, fairly low-costs we could deliver it to the sports field, the existing Waimea sports field quite readily. But the rest of the system actually goes right now to the Kukui'ula reservoir, administered by Kukui'ula Land Company. It is part of that study is to determine how the R-1 utility, if any if you would accept that concept as an irrigation company. How that would be established?

Ms. Yukimura: Are you retaining legal consultants for this as well?

Mr. Tschupp: Not in this allocation. We have been working somewhat with the County Attorney's Office.

Ms. Yukimura: Because you are breaking new ground and this will become – if it is not already, a very valuable resource. How you allocate it fairly and how you charge for it, I do not know whether you are charging for it but you are saying, you are acting like a utility and it seems to me that you need to start thinking about what kind of structure this utility is going to have.

Mr. Tschupp: I absolutely agree and that is part of the sort of management plan aspect that when we go out for the consultant to do the environmental and preliminary engineering work, we are also including in that scope the sort of utility management piece. With that we can get their initial input on that, too. I think at this time it is premature to bring in a legal advisor as part of the consulting team; however, that may be something that becomes necessary.

Ms. Yukimura: Yes. I do not know when that will be either, but I mean for one thing, you want to make sure that the County's needs are met first for R-1 water and then I do not know if you are charging. Do you like the Water Department charge the County for use the water and what about the other users, proximity, there are just huge complexity of issues to look at as you develop this. But we all know that the sustainable future is dependent on good use of secondary water.

Mr. Tschupp: I absolutely agree and the only thing that I have to add to that at this time is that under our current sewer ordinance and the last time we updated the sewer ordinance, we did include in their a provision for rates for R-2 and R-1 water. The tariff that our rate consultant at that time had come up with for R-2 water was something along the line of deferred pumping costs, I believe the

number was \$0.20 per thousand gallons. Now Maui County has essentially established a utility structure in the Kihei system and they work on a sort of a what is the deferred cost of an alternative source kind of tariff, which is what I was envisioning. I think that the language in the R-1 tariff in our existing ordinance is a case-by-case based on costs and to be negotiated directly with. There could be an ordinance change coming out of having more established and this work actually that leads us towards establishing a more island wide consistent rate for R-1, but we are not there yet.

Ms. Yukimura: My next question may be a question for Mr. Dill. But I mean when we develop our parks, do we put in – is this a dual water system or do we include that in the design of our parks in preparation for our park systems being fed by irrigation or R-1 water?

LARRY DILL, County Engineer: Good afternoon, Larry Dill, County Engineer for the record. It would be a dual water system from the standpoint that we continue to serve potable water to the comfort stations and the lake and then would have a separate reclaim water purple pipe system serving all irrigation needs. As I mentioned this is our first foray into the field and we have been working with Parks Department as far as how we would serve their facilities they have and are proposing on the West side. Those discussions are happening as to how we accommodate those issues going forward.

Ms. Yukimura: I do not know if potable water needs to be used for toilets in restrooms or whether this can be used which is another policy and design issue that probably needs to be explored as well.

Mr. Dill: Yes.

Ms. Yukimura: I kind of did a mind snap that I needed to remember that you are not in charge of Parks anymore. But you still deal with infrastructure within the parks.

Mr. Dill: Yes. We have had conversations with Parks specifically about this project and how we can meet their needs.

Ms. Yukimura: I think it is important to begin to communicate early with our fellow County Departments, like Parks, and Water. I think those communications will be important. Thank you for answering my questions very well and for not resenting that I asked questions.

Chair Furfaro: I do want to say that you two (2) gentlemen in particular give me a great deal of confidence in the oversight of this project and so forth. The fact of the matter is that Larry has managed private water and sewer systems under KCPIC for a good portion of his time and I want to make sure that we stay really close to the rate scheduling and use allocation and so forth. I just want to reiterate that with you two (2) gentlemen it gives me a great deal of confidence.

Ms. Nakamura: Just a quick comment to follow-up on the consistency with the Kaua'i County six (6) year CIP report that some of the numbers may not be consistent with what you are reporting today. I just want to ask you to take a look at it and update this, so that it is consistent. Thank you.

Chair Furfaro: If I may say, Larry, that is along the lines of meeting that I had with you and your team yesterday on solid waste on making sure that these items are updated in the CIP and you are giving us information as quickly as possible on financial exposure. It is really important.

Mr. Bynum: I apologize for missing the first part, but from what I heard, I just want to confirm you are working on the policies and procedures regarding R-1 distribution both to ourselves potentially as customers, which will save money if we are using R-1 water rather than potable water for irrigation and for other end uses that might have charges involved. That is my understanding, is that correct?

Mr. Tschupp: Yes. As part of this initial phase of getting to the environmental assessment and preliminary engineering, I have included a task for a management plan development that would be the start of developing that kind of system.

Mr. Bynum: That is great. We have talked about this for several years and the output of that expanded system is all R-1?

Mr. Tschupp: That would be for the distribution of the R-1 from the plant.

Mr. Bynum: Which can be used to irrigate aerial parts?

Mr. Tschupp: Right. If you think about the Lydgate sports field, that is being irrigated subsurface with R-2 and so those underground drip kind of system would not be necessary with an R-1 system.

Mr. Bynum: I know our parks people are more comfortable managing traditional irrigation. Thank you very much.

Chair Furfaro: Members, I have just extended with the Clerk and I want to get this item done before we go to lunch. I have extended to the Clerk that we'll be with this with item until 1:00, so please kōkua with me so that we can get the staff out for lunch appropriately.

Mr. Kualī'i: Aloha and mahalo for being here. You answered a lot of my questions asked by Vice Chair Yukimura, the one thing that you mentioned that it is like new and you mentioned we are doing it in Līhu'e. How is it currently working in Līhu'e? We are selling it to the golf course?

Mr. Tschupp: Līhu'e was a very interesting project because actually Kaua'i Lagoons, with whom we have a long-term contract to provide that they were obligated to accept up to one and a half million gallons a day of R-2 and they wanted that to be R-1. They basically did the design build project to do the R-1 upgrades. The plant does not put out more than one and a half mgd right now. Under the original agreement and them having funded the improvements, we have not really...there were other language in that long-term contract that had talked about establishing rates also. So far we are not providing to anybody, but Kaua'i Lagoons and we are not really charging them because they paid for it.

Mr. Kuali'i: Then you used to be in charge at the Department of Water, right?

Mr. Tschupp: That is correct.

Mr. Kuali'i: You had mentioned that no arrangements were made yet with them and you mentioned the dual system?

Mr. Tschupp: I can say from the Department of Water's perspective, their concern is the risk of any cross-contamination and so I am sure they will require installation of back-flow preventers and things of that nature so that reuse water cannot get into potable supply which is where you get into the dual pipe and purple pipe systems. With that separation, I am not sure how extensively we need to coordinate with them. They just find that they have more water because the people who are irrigating off of our system are now irrigating off of our system.

Mr. Kuali'i: Then the last question those do with putting all of the infrastructure in place and what will that take? What does this \$970,000.00 represent? It is federal monies, will we be needing to get additional federal monies, and is it that doable? How much monies will need to come from the county and will there be any private partners also putting in monies?

Mr. Tschupp: Yes. That was several questions that I will try to go through them quickly. The \$970,000.00 was a federal allocation in support of work on wastewater in Waimea. I think I mentioned before that I estimated that what I can envision at this time in today's dollars for the system, which would include a tank and some pipeline improvements and some improvements on the distribution system and there is an existing distribution system owned-and-operated by Kukui'ula Land Company that I think it is not that far apart. I view that as around three million dollars of improvements of which the \$970,000.00 can pay for the preliminary studies, which is the current application, as well as any remaining funds that don't get taken away by Congress, could go towards construction once the environmental documents are completed. That leaves roughly two million that would need to be funded elsewhere of the total construction costs. I would think that because of the SRF program funds that twenty (20) year, it is Federal, but these kind of grants do not come up very much and I think that the way EPA is basically administering things is typically trying to fund things through SRF and that is a very favorable type of funding for us. Private involvement, absolutely required because we are talking about rights of way that are owned by Kukui'ula Land and actually, if we can tie into the Kukui'ula-the existing non-potable water distribution system that Kukui'ula currently operates then we are almost there and that is why I think it only ends up being three million dollars. A lot of that is a few fairly short pipeline segments and a tank and maintenance and repair activities. But that is part of the complexity of setting up essentially the utility type of structure of a reuse system is that I'm not sure whether this ends up becoming something that we go to Kukui'ula Land and ask them for easements and then the County operates that system or whether it is something that works out to be or they become a customer of us and it could be Kukui'ula land company or some other non-profit or private type of enterprise could perhaps set up an irrigation company and we just give them a meter. There are many different possible structures all of which include cooperation with your private partners.

Mr. Kuali'i: Thank you very much.

Chair Furfaro: Any other questions for the gentlemen here before I call up any other testimony.

Ms. Yukimura: Your system will take into count the existing public institutions like the schools and hospitals?

Mr. Tschupp: Yes. The existing efflon line up to the reservoir goes pretty close to those kinds of things.

Ms. Yukimura: Yes. Right, they are logical.

Mr. Tschupp: If we can connect across there is a lot of potential users including like the Church Cemetery and some people in town that are crying for water. So there is a lot of potential for reuse water in Waimea, probably more than we will end up having supply for in the long run so there may need to be supplemental non-portable water system development too. Your earlier point about needing some legal utility system consultation is spot on.

Ms. Yukimura: Thank you.

Chair Furfaro: Mr. Dill and Ed, thank you for the comment on the spot on but I think in my comments earlier. Again, I have a lot of confidence with you that you will stay very close to Vice Chair's recommendation in the next phase. I'm going to excuse you.

Mr. Mickens: If I heard the County Attorney properly, he has ruled that the grant of \$35,000.00 for the P.O.H.A.K.U. Program is illegal since the Charter doesn't sanction it, does that mean that any grant such as this \$970,000.00 grant or any other grant not in the Charter is also illegal?

Chair Furfaro: Glenn, I already have a County Attorney opinion on that that has been distributed. So we are fine at this particular point.

Mr. Mickens: So what he said about being illegal, is that true or isn't it true?

Chair Furfaro: I have answered your question and if I reference the rules, the questions to the Chair should be limited and I have answered that we have a legal opinion...

Mr. Mickens: From County Attorney?

Chair Furfaro: From the County Attorney on this grant. We have one.

Mr. Mickens: He said it is illegal so then is any Program not under the Charter illegal?

Chair Furfaro: In all fairness, I would like to let the County Attorney answer my questions that I gave him until October 17<sup>th</sup> it answer that, and those questions were about other grants. His point is within the role of Section 92-B of the Charter, the Prosecutor's office does not explicitly give them that authority for diversion, that is a separate legal question piggy-backed with the

question on these other agencies and we did get a legal opinion back so we are fine at this point.

Mr. Mickens: So he will be back on the 17<sup>th</sup> to answer the major question which is whether all grants have to be in the Charter to be able to be legitimate or not?

Chair Furfaro: The questions that I sent over the on the second of October, there were four (4) parts to the question. The one that I am focused on right now for this agenda item is we got a legal opinion on this.

Mr. Mickens: Thank you.

Chair Furfaro: Anyone else who wishes to give public testimony?

MIKE FAYE, Chairman, Board of Kukui'ula Land Company: About a little more than two (2) years ago when the Sewage Treatment Plant upgrade became real, we realized there was going to be this high-quality R-1 water. Kukui'ula land has been taking the sewage affluent from the Waimea sewage plant since 1972 when it was built. With an increase this could go up to seven hundred fifty thousand gallons. The first thing we were concerned about is without a water reuse program, the wastewater, which is currently designed, would be injected into the ground, or used for basically corn field irrigation. Which is a concern to us, because that water can never get into the ocean and so for our land, we have had to make sure since 1972 and the Clean Water Act, we have had to make sure that the water in our irrigation reservoirs never got to the ocean. Actually the only time it could be is under severe storm events. About two and a half years ago we saw this as just a wonderful opportunity. We have had the benefit of our ditch water system, which we can still use it which is a dual-use system, and when this came available to use we looked around and said the park could use some water, hospital could use more water, Waimea Intermediate could use some water and those are all, about our property and it would be easy to get the water there. Then we looked at Waimea High School and those fields out there are usually pretty dry and with a little bit of extra, maybe we could do this. We did call all of those players together about two years ago and talked about those possibilities and because we were using wastewater that we would have some reluctance. But actually, everybody in that room supported it one hundred percent and have been asking where is it? They are waiting for it. Another program that we had, as you know, our West Kaua'i business and our main street we had that Greening Program to green the highway. The recent pipe work in Waimea dug all of that up and if you drive through Waimea right now and it was not an official D.O.T. Improvement, it was not on their maps. The contractors came in and dug it all up and we are trying to get that back. We want to see if this water can be used for that. The long and short of it is as Ed mentioned there is going to need to be a private/public partnership and Kukui'ula Land is firmly behind participating in this, we have always supported the community and we want to continue. We really look forward to this and think this could be a great pilot project for the entire island and perhaps the entire State. Thank you.

Chair Furfaro: Thank you. Any questions, members? If not, thank you very much.

Mr. Faye: Thank you.

Mr. Taylor: Chair, members of the Council, my name is Ken Taylor. I do not think that at this point in time you should approve this grant request. I think a cost-benefit analysis needs to be done to justify the potential expenses that would be incurred here. I do not disagree that it is beneficial to use reclaimed water, but there is a lot of costs involved and a lot of issues that do not seem to be addressed from what I see in this document. But what is the cost of installing the purple pipe system and pumping costs and will there be a charge for the water? What are the health departments rules and regulations on R-1 water use? Can a property have both potable water and R-1 water hookups? Those are just some of the questions that come to mind quickly but I know there is a lot more, and until these are answered, I do not think you should move forward with this grant request. Thank you.

There being no objections, the meeting was called back to order, and proceeded as follows:

Chair Furfaro: I would like to reemphasize my earlier comment between Engineer Ed Tschupp, and Engineer Larry Dill, we probably have the two (2) finest water/wastewater personnel available on Kaua'i and maybe even in State with these two (2) gentlemen. I have a lot of confidence in them and the questions raised by Vice Chair Yukimura is a very credible one and know you heard it about getting us to the next phase. I will be supporting this one hundred percent. Any other comments before I call for the vote?

Mr. Chang: I think that it was a great observation and I wanted to share my support to those two (2) fine gentlemen. I also want to comment, Ed, because I have never seen anyone with more knowledge articulate with so much enthusiasm about water than Ed Tschupp.

Ms. Yukimura: And sewage.

Mr. Chang: That was great, thank you.

Mr. Bynum: I am in full support of this and I think it is a great win-win situations and I want to echo the Chair's comments that we have really quality individuals. Ed has taught me more about bugs than I ever wanted to know...

Ms. Yukimura: Bugs?

Mr. Bynum: It is unusual to have someone be enthusiastic about wastewater, but Ed is. This is an opportunity where wastewater as a product is a win-win for the County and the community and also make it affordable to put green waste on the dry West side where normally you could not do that. I think Mr. Taylor raised good questions and that is something that they know a lot about and that we have discussed on other projects, particularly at Lydgate. So just briefly, it is okay to use R-1 water for these purposes and the Health Department rules are clear and these individuals know them really well. Thank you.

Ms. Yukimura: I think this is a wonderful pilot project and is paving the way for the future. We are going to have to go to dual-water use systems and we need to reuse our effluent waters. I think this is a good project that has a detailed work plan and a good discussion of the phases. I believe the questions asked by Mr. Taylor will be answered in the first phase and I want to thank

Kukui'ula Company and Mike Faye for their early participation, sharing of knowledge and their cooperation. It all reflects a very important public/private partnership and I will be voting for this.

Chair Furfaro: Anyone else before I speak? I too would like to thank the Land Company for staying focused as well as the partnership that has developed with the County over the years with the County. The value of this project will reflect good things for the community. On that note I would like to do a roll call vote please.

The motion to approve C 2012-375 was then put, and carried by the following vote:

FOR APPROVAL: Bynum, Chang, Kualii, Nakamura, Rapozo, Yukimura, Furfaro	TOTAL-7,
AGAINST APPROVAL: None	TOTAL-0,
EXCUSED & NOT VOTING: None	TOTAL-0.

There being no objections, the Council recessed at 1:00 p.m.

The Council reconvened at 2:05 p.m., and proceeded as follows:

CONSENT CALENDAR:

C 2012-391 Communication (09/26/2012) from Councilmember Kualii, providing written disclosure of a possible conflict of interest and recusal, relating to the request for the Prosecuting Attorney to apply for, receive and expend Non-Compliant Sexual Offender Unit Federal Funds, due to his employment with the YWCA: Mr. Chang moved to receive C 2012-391 for the record, seconded by Ms. Yukimura, and unanimously carried.

C 2012-392 Communication (09/13/2012) from Councilmember Bynum providing written disclosure of a possible conflict of interest and recusal, relating to C 2012-389 and ES-576 on the October 3, 2012 Special Council Meeting regarding Tim Bynum vs. County of Kaua'i, et. al., Civil No. CV12-00523 RPL (U.S. District Court): Mr. Chang moved to receive C 2012-392 for the record, seconded by Ms. Yukimura, and unanimously carried.

C 2012-406 Communication (09/13/2012) from the County Engineer, transmitting for council consideration a traffic resolution which establishes, "No Parking At Any Time - Fire Lane" and "Tow Away Zone" at the County of Kaua'i's Pi'ikoi and Kāpule Buildings at the Līhu'e Civic Center, Līhu'e District: Mr. Chang moved to receive C 2012-406 for the record, seconded by Ms. Yukimura, and unanimously carried.

C 2012-393 Communication (09/10/2012) from the Planning Director, transmitting for consideration, the Planning Commission's recommendation to amend the conditions in Ordinance No. PM-175-88, Princeville, Kaua'i, Tax Map Key No.: (4) 5-4-024:020 (Princeville SC Development, LLC Applicant.): Mr. Chang



moved to receive C 2012-393 for the record, seconded by Ms. Yukimura, and unanimously carried.

C 2012-394 Communication (10/03/2012) from Council Chair, transmitting for the consideration A Proposed Draft Bill For An Ordinance Regarding Article 1, Chapter 19 of the Kaua'i County Code 1987 As Amended, Relating To Parks and Recreation – Prohibiting Fishing At Lydgate Beach Park Pond: Mr. Chang moved to receive C 2012-394 for the record, seconded by Ms. Yukimura, and unanimously carried.

C 2012-395 Communication (10/03/2012) from Councilmember Yukimura and Councilmember Bynum, transmitting for the consideration a Bill For An Ordinance Relating To The Public Access, Open Space, and Natural Resources Preservation Fund to increase the annual allocation to the Fund from a minimum of one-half of one percent (0.5%) to one and one-half of one percent (1.5%) of the County's certified real property tax revenue: Mr. Chang moved to receive C 2012-395 for the record, seconded by Ms. Yukimura, and unanimously carried.

C 2012-396 Communication (10/03/2012) from Councilmember Nakamura, providing written disclosure of a possible conflict of interest and recusal relating to C 2012-393 and Proposed Draft Bill No. 2451 regarding Princeville SC Development, LLC because her husband provided legal representation to the parties in this matter: Mr. Chang moved to receive C 2012-396 for the record, seconded by Ms. Yukimura, and unanimously carried.

C 2012-407 Communication (10/04/2012) from Councilmember Bynum, providing written disclosure of a possible conflict of interest and recusal relating to C 2012-336 regarding the Keiki P.O.H.A.K.U. Diversion Program due to his involvement in Tim Bynum vs. County of Kaua'i, et. al., Civil No. CV12-00523 RPL (U.S. District Court): Mr. Chang moved to receive C 2012-407 for the record, seconded by Ms. Yukimura, and unanimously carried.

#### COMMUNICATIONS:

C 2012-376 Communication (08/24/2012) from the Environmental Services Management Engineer, requesting Council approval to accept a one-year trial of the "Catalog Choice for Communities" program valued at \$3,500.00 to assist Kaua'i County residents with eliminating unwanted mailings through a web-based opt-out system, free of charge with no obligation to renew for a second year: Mr. Bynum moved to approve C 2012-376, seconded by Mr. Chang.

Chair Furfaro: On that note, Mr. Dill, Troy, we have received an evaluation back from the County Attorney, is either of you going to speak on this item now?

Mr. Dill: Only if you have questions that oppose.

Chair Furfaro: Let me see if members have questions? No members have questions.

The motion to approve C 2012-376 was the put, and unanimously carried.

C 2012-379 Communication (08/29/2012) from the Environmental Services Management Engineer, requesting Council approval to accept a grant not to exceed \$100,000.00 from the State Department of Health for Electronic Device Recycling including community collections, education and outreach, and reporting activities: Mr. Bynum moved to approve C 2012-379, seconded by Ms. Yukimura.

Mr. Rapozo: Mr. Chair, can we get an overview of that as well?

Chair Furfaro: Which member of your Division will give us an overview of this? Troy?

There being no objections, the rules were suspended.

TROY TANIGAWA, Public Works, Management Engineer: The funds connected to request are from the State Department of Health is based on electronic recycling initiatives that were adopted and passed by the Department of Health. In January 2010, the State of Hawai'i passed the Hawai'i Electronics Waste and Television Recycling and Recovery Act. It requires electronic manufacturers to provide recycling programs for certain types of electronics deemed covered electronics. Unfortunately these programs that these manufacturers offered, on the neighbor islands have been mainly including mail-back type programs and not collection events. These have been perceived to be very inconvenient by the public. These limitations have resulted in the State offering more convenient on-island programs for certain covered electronics which is the purpose of this grant. For the past few years the County has sponsored annual E-waste recycling events and this is an opportunity with these funds to improve on the services that we have provided.

Mr. Rapozo: The County is going to run collection program?

Mr. Tanigawa: We will issues a contract to a vendor to do collection events.

Mr. Rapozo: You folks are going out to bid on this?

Mr. Tanigawa: Yes.

Mr. Rapozo: Are there many people that do this on Kaua'i?

Mr. Tanigawa: There are several people and recently it has gotten very competitive. We actually had a zero bid for the past electronic recycling event and it shows a lot of promise that the funds can go a long way.

Mr. Rapozo: When do you expect the bid notification and notices to go out?

Mr. Tanigawa: It should go out this fiscal year. I would say by the early part 2013 we should have something ready to hit the streets.

Mr. Rapozo: Thank you.

Chair Furfaro: Any more questions? If not thank you, Troy.

Chair Furfaro: Is there anyone in the audience that wishes to testify on this item? Come right up Lonnie.

LONNIE SYKOS: I am all in favor of this. My last flight back from the mainland I sat next to a guy whose business in California was doing electronic recycling and couple of hours of conversation and I was shocked at how big this industry is globally. We think about gold and platinum and things, but one of the things that they recover is rare earth minerals. These are way more valuable recycling than gold, platinum and the other metals. They are also extremely toxic in our landfills so I am all for this. But given the expense and the issues are the same in all of the outer island counties, I would encourage the Council to encourage the Administration to look into if we can hui up with the other island counties and end up way single recycling facility, so that each of the counties does not have to create one and move it interisland by Young Brothers. I do not know if Kaua'i would be the appropriate location or somewhere else. But there is a possibility here for long-term saving money for us if we hui up with the other counties. I d not know if it is practical since I have not done any research, but that is my observation. Thank you very much.

Chair Furfaro: Thank you, Lonnie. Are there any questions for Lonnie? Thank you very much Lonnie. Anyone else wishing to testify on this item?

There being no objections, the meeting was called back to order, and proceeded as follows:

Chair Furfaro: Seeing no one we have a motion and a second. All those is favor?

Ms. Yukimura: Oh, Chair?

Chair Furfaro: Did you want to have discussion before we call the vote?

Ms. Yukimura: I just wanted to call attention to our Engineer and Solid Waste Manager, because I did not think they heard what Lonnie's suggestion was, but there seemed to be some merit into looking into it. Thank you.

Chair Furfaro: I would suggest if you pursue what Lonnie had to say, that somewhere along the line you also communicate any possibilities to Mr. Rapozo, as he is President of the Hawai'i State Association of Counties. It might be something that they could put on their shared agenda. Thank you, Vice Chair Yukimura. I would like to again call for the vote.

The motion to approve C 2012-376 was the put, and unanimously carried.

C 2012-397 Communication (09/24/2012) from the Director of Finance, transmitting the Condition of the County Treasury Statement quarterly report as of August 13, 2012: Mr. Chang moved to receive C 2012-397 for the record, seconded by Ms. Yukimura, and unanimously carried.

C 2012-398 Communication (08/23/2012) from the Chief of Police, requesting Council consideration and approval to accept a donation of twelve (12) sunglasses with a built in bi-focal feature to enhance Police Officer safety, from Licia McDonald, Marketing and Sales Representative of Hawaiian Lenses: Mr. Kauli'i moved to approve with a thank-you letter to Licia McDonald of Marketing and Sales Representative of Hawaiian Lenses, seconded by Mr. Chang, and unanimously carried.

C 2012-399 Communication (09/4/2012) from the Chief of Police, requesting Council approval to expend approximately \$140,000.00 in asset forfeiture funds (Acct No. 206-1001-551.30-00) to purchase an Evidence Collection Vehicle, which will replace the 2002 Ford Explorer with vehicle mileage of 148,466: Mr. Kauli'i moved to approve, seconded by Mr. Chang.

Chair Furfaro: I asked the staff to circulate to you folks a brochure on the specifications on this particular piece of equipment. On that note, I can suspend the rules. Lonnie, am I seeing that you want to testify on this item?

Mr. Sykos: On the previous item.

Chair Furfaro: I tell you what, I will open up testimony when we come back from the break on that item. Is anyone in the audience wishing to testify

on the particulars and scope of the equipment that has been submitted to us for the Police Officer's requirement here? No?

The motion to approve C 2012-399 was then put, and unanimously carried.

C 2012-400 Communication (09/05/2012) from the Chief of Police, requesting Council approval to accept and expend S.T.O.P. Violence Against Women Grant funds in the amount of \$63,871.00 to be used for a Sexual Assault Nurse Examiner (SANE) Coordinator, non-reporting SANE examinations, and SANE standby pay, and to indemnify the State of Hawai'i, Department of the Attorney general: Ms. Yukimura moved to approve, seconded by Mr. Chang.

Ms. Yukimura: I believe this is a repeat grant and I remember last year asking for a deferral and time to ask questions. I am convinced it is a very good program and well implemented by our Police Department and I think the YWCA.

Chair Furfaro: I am not sure if the YWCA is involved.

Ms. Yukimura: It is just our Police Department so I am more than happy to vote for it.

The motion to approve C 2012-400 was then out, and unanimously carried.

Chair Furfaro: On that note, we are going to take a tape change now.

There being no objections, the Council recessed at 2:18 p.m.

There Council reconvened at 2:22 p.m., and proceeded as follows:

C 2012-401 Communication (09/11/2012) from the Civil Defense Agency, requesting Council approval to receive and expend grant funds from the U.S. Department of Homeland Security, via the State of Hawai'i Department of Defense in the amount of \$359,925.00, to be used for the FY 2012 State Homeland Security Program which will enhance the capability of State and local units of government to prevent, deter, respond to and recover from, threats and incidents of terrorism, and to continue to provide support to the Citizen Core Councils.

Chair Furfaro: Before I ask Civil Defense to come up, Lonnie, I am going to allow you three (3) minutes to give testimony on an item that we previously took action on. Please come up and state your name and the testimony item that you are giving because we are out of sequence and that is my fault.

There being no objections, the rules were suspended.

Mr. Sykos: Thank you, Chairman, for the opportunity to speak. I wanted to speak on C 2012-398. In general, I am completely supportive of

providing the materials and resources required by K.P.D. to perform their duties. However, I do have an issue with this gift of sunglasses with built-in bifocal feature. Are these prescription glasses? Does anyone know?

Chair Furfaro: I know that they are bifocal in design so that when the officers are parked in their car, you have got a reflection coming off of their windshield, and they are allowed to adjust it. But are they actually prescription? I am not sure, but I do know they are bifold in nature for that purpose. Are there any Councilmembers able to answer that question?

Mr. Bynum: Yes, and I am happy to say that the supporting documents are online for anybody to look at. It looks to me that they are regular sunglasses that have the kind that you buy at the store, for when you are looking down...reading glasses. The value is \$20.00 a piece, so I doubt highly that they are prescription.

Mr. Sykos: The reason that I am here is just the matter of principle. As a normal course of business, would K.P.D. purchase such an item for the officers? I am not asking for an answer, this is just a rhetorical question. So if K.P.D. buys sunglasses, that is one issue. But if they do not buy sunglasses, currently this marketing effort and a tip of the hat to Ms. McDonald here, that apparently is designed to encourage K.P.D. to buy more of these in the future. I am simply asking if this is an appropriate way for the County to choose to do business. This is a vendor circumventing the normal procurement process which means that they would have to compete with other vendors out there. That is the reason I came up.

Chair Furfaro: Before I give Mr. Bynum the floor, I am glad—in my query, it was just about helping them with the reflection in the cars that they could tilt the degree on the sunglasses for the purpose of a lot of strain on the eyes sometimes make you a little sleepy at the wheel. But I saw that as a safety issue. Mr. Bynum, you want to add to that?

Mr. Bynum: I will just take a moment to respond. I think it is an interesting question and it may be a marketing effort to do that and it turns out that it is a safety improvement and makes our officers more effective. The Police Department may choose to budget for that and purchase them and that is their kuleana. But if that happens, I know for sure they will have to go through a normal procurement process. So even if it is a marketing effort, “here are twelve (12) sets of sunglasses. See if it is really something good.” That includes productivity and safety. It is an interesting question, but I am okay with approving this, personally.

Mr. Sykos: My deal in this is that the sunglasses are asked to be approved for safety reasons. But what is your baseline to measure safety? Right? You are taking on a liability that they may or may not do what they say what they are going to do and again, this is not about this product. It is about the process of introducing new equipment to the Police Department. I mean, certainly vendors need to be promoting new concepts, right? So I am not saying it should not be done, I am just asking the question of if this is the appropriate way.

Chair Furfaro: Thank you for the question, Lonnie. I hope we have been able to respond to it in some fashion at this point, but I see the need and hopefully it can reduce any challenges that the officers have. On that note, Civil Defense, would you come up?

Chair Furfaro: Okay, Ted. We read the item for you and I am giving you an opportunity to give us an overview on this item.

THEODORE DALIGDIG, III, Civil Defense Manager: The item that is in front of you is a grant amount of your sub grantee. It involves a couple of things that we do and when I say "we" because I have to refer to the Police and Fire Department in part. But I have to be really careful in disclosing what the grant is used for, because I would have to go into capabilities and we are not permitted to discuss that unless we are in Executive Session. But I have had three questions that were sent to me earlier and if I could, I would like to answer those questions for Councilwoman Nakamura, I believe it was. The first question was, "how is the budget funds used?" As I said earlier, in order for me to really disclose how we use the funds, I would have to ask you to go into Executive Session, because it involves capabilities, vulnerabilities and we do not want the other guys to know that. The question also deals specifically with the Citizen Core Council that we received monies for in that grant and that amount is about \$24,000.00 and it involves the C.E.R.T.S. program. The Community Emergency Response Team, C.E.R.T.S., that is the program that is actually being handled by the Fire Department. So I would have to defer to them if you have specific questions. The neighborhood watch theme is another program that the funds come through us, but it is actually a program handled by the Kaua'i Police Department.

The third question is, "what are the program outlines for the grant application?" For that I am going to have to put on my glasses. We have the sub grantees of the application. The State of Hawai'i Civil Defense is the main party. Our projected goals and objectives are collaboration between all of the different islands. Again, this would involve us disclosing details that we are not allow doing in public, but we can in Executive Session. Those are the answers to the questions. Are there any more questions?

Chair Furfaro: Ted, I am wondering and maybe the County Attorney can give us a briefing on this. I have watched the Fire Commission once. I watched the Police Commission once, recently. I do not want to say that I only watched once in ten years, but I have watched periodically and the question comes up about these funds and the Police Commissioners are told, because it is F.E.M.A. guided, they cannot answer the questions in details. The same thing comes up with the Fire Department. We have got these monies and cannot really discuss with you because of the issues associated with confidentiality with F.E.M.A. Now, it is like déjà vu again. So maybe this should be an Executive Session item?

Mr. Daligdig: I would suggest, Mr. Chair, if the Council wants more detailed answers we could go into Executive Session and I have brought my team with you so we can reveal the information that we can present to you.

Chair Furfaro: I think that is what we will do because after watching on television the last few weeks with Fire Department and Police, it is all about this secrecy of the moneys being spent to protect us and I think at least the Council should have this as an Executive Session item.

Mr. Daligdig: I agree, and we are willing to go into Executive Session.

Chair Furfaro: Members, are you okay with that? Can I take some discussion from you?

Mr. Rapozo: I would suggest that we refer this to the Public Safety Committee and set an Executive Session for that time. I do not know.

Chair Furfaro: Do you agree with me?

Mr. Rapozo: Yes, to some extent, but I do not understand where the prohibition is. Is it a F.E.M.A. prohibition that we cannot discuss?

Mr. Daligdig: It is a Federal grant prohibition that comes out of F.E.M.A.

Mr. Rapozo: Is it spelled out "prohibition" that you cannot discuss some of this? I am not asking to find out— my question is out of \$359,000.00, how much is for training and how much is for equipment? I cannot imagine that being in Executive Session but just a breakdown like that, but just to come up with, "we need \$359,000.00, but we cannot tell you." If we could have a break down, such as out of that how much is for training? How much is for travel? How much is for equipment? I do not know where to start to think where this is going to go...and neighborhood watches and C.E.R.T.S. Again, that is a whole other discussion. Is C.E.R.T.S. something that we are going to beef up? C.E.R.T.S. discussion is not Executive Session.

Chair Furfaro: I want to make myself clear. I have seen it now three (3) times. I am saying I want to know why. Secondly, if I am getting equipment, I want to know if there is any contingency tied to the Federal Government about the use and maybe even future returning of the equipment. Or if we take the equipment and something does not function right that we are accepting the liability to reimburse or whose implied warranty if we have to send a truck back? I agree with Mr. Rapozo, about what part of the grant should actually be on the agenda, which is something that we can talk about and break it down in committee.

Mr. Daligdig: Sure, I can.

Chair Furfaro: I am just saying in around about way, are we getting fire trucks to fight interior fires? What are we getting here?

Mr. Daligdig: I have the breakdown that Councilmember Rapozo...

Chair Furfaro: Well, give us the breakdown.

Mr. Daligdig: I can give you the breakdown. For the Citizens Core we have \$24,925.00.

Chair Furfaro: No, I am not asking you to read. I want you to send me a memorandum telling me what the breakdown is, so I can say, "okay, these items go to Mr. Rapozo's Committee and we can talk about them openly," and so forth. Then for these items that have prohibition from the Federal Government, they will go to the Executive Session. That is what I am looking for.



Mr. Daligdig: Yes, sir, I can do that.

Chair Furfaro: Is in that acceptable to you, Mr. Rapozo?

Mr. Rapozo: Yes, Sir.

Ms. Yukimura: I like that you divided up those things that were to be discussed in public and the Executive Session. I did have some questions about the Citizens Core Program and C.E.R.T.S. and the neighborhood watch as well. If we put it in a Committee where we can ask these questions in the open and then go into Executive Session for things that we are not able to discuss, or if we are prohibited from discussing. In the public, I think that would be a good way.

Chair Furfaro: Between you and Mark, can you get that turn around to me by tomorrow so I can post next week Wednesday for those items that should be in Committee?

Mr. Daligdig: Yes. I have to turn it to Mark, because I leave at 6:15 tonight and I will be away for four (4) days. May I ask if you have the questions, it would help us a lot to prepare for us to get the right and full answers.

Chair Furfaro: First you get me the breakdown urgently, so that I can post it accordingly because next week is the Public Safety Committee.

Mr. Daligdig: Yes, sir, I can.

Chair Furfaro: Then the following week, we will put an Executive Session on those that are prohibitions on them from the Federal Government.

Mr. Daligdig: Yes, sir, I can do that.

Chair Furfaro: And Vice Chair Yukimura, could you hold your questions until next week?

Ms. Yukimura: Yes.

Chair Furfaro: Very good. Jade, did you hear what we are trying to do? So get that in to Jade as soon as you possibly can, Ted. If you could, Mark, we will go from there?

Mr. Daligdig: We can do that.

Chair Furfaro: Okay. Gentlemen, I am going to excuse you from there. Is there any public testimony on this item? Yes, come right up, Lonnie.

Mr. Sykos: As I stated earlier, and as my communications with Chief Perry will demonstrate, I am fully supportive of our Police Department and our Fire Departments' public safety and public security functions. However, in regards to this grant, I am adamantly opposed to moving forward and accepting taking this grant as-is. My rationale is this, who controls the Kaua'i Police Department and the Kaua'i Fire Department? Is it Homeland Security or is it the people of Kaua'i? And so, as the Council has taken into account, there are perhaps parts of this that can have public disclosure and there are parts that do not have public disclosure. I am speaking now because of my unhappiness, my extreme

unhappiness that Civil Defense and thus the Police and Fire have presented this to us with the expectation that we will give them a blind check to do whatever they want. They work for us and I thank the Chair for the questions that he raised. And I hope all of the Council does their due diligence to figure out what the public can be told and should be told and whether or not all of the money is spent in ways that we believe are appropriate for here on Kaua'i. Public oversight is required. For myself, I have been vetted by the F.B.I. since 1962 in second grade because of my father's employment. I have been vetted multiple times in my adult life and it is insulting so someone who risked their life hunting Soviet submarines that what occurs within the Kaua'i Police Department is presumed that people like me, who have served their Country, should not know what is going on. If the Country wants to be safe, we need informed citizens. That is the essence of democracy is informed citizenry. The threat of al-Qaeda or the threat of a lone wolf or the threat of whatever, is not superior to the threat of an ignorant public. Thank you.

Chair Furfaro: So you support how I am going divvy this up?

Mr. Sykos: Correct. Thank you very much.

There being no objections, the meeting was called back to order, and proceeded as follows:

Chair Furfaro: Is there anyone else who wishes to speak to this item? If not, I guess I would like a motion because we have no motion on the floor.

Mr. Rapozo moved to refer C 2012-401 to the Public Safety and Environmental Services Committee, seconded by Mr. Bynum.

Chair Furfaro: I would like to modify that to say "portions" of this item.

Mr. Rapozo: Yes, I could do that. I do not know what portion it is, though.

Chair Furfaro: None of us know, but we will depend on them to send us a communication. I would like to note that and I will expedite it for next week.

Mr. Rapozo moved to refer C 2012-401 to the Public Safety Committee with a follow-up posting to be made at the discretion of the Chair for Executive Session, seconded by Mr. Bynum.

Mr. Kualii'i: I just had a quick thought, Chair. So in the response to questions, if an Agency, any Department feels that it is confidential, the Council can receive confidential communications as well. I mean we receive them all the time from the Attorneys. So I just want to make note that that was an option that we could have received a breakdown in that manner.

Chair Furfaro: You are correct. I guess my point was that after the last three (3) weeks watching the Police Commission and watching the Fire Commission and just kind of getting this, "we were sworn to secretly and so forth, but we need you to vote." I am kind of going, "that is not how we vote." You need it know what you are voting on first. We have a motion and a second. Thank you for the commentary. Next item, please.

The motion to refer C 2012-401 to the Public Safety Committee with a follow-up posting to be made at the discretion of the Chair for Executive Session was then put, and unanimously carried.

C 2012-402 Communication (09/20/2012) from the Executive on Aging, requesting Council approval to receive and expend State of Hawai'i funds and to indemnify the State of Hawai'i Executive Office on Aging (for additional Kupuna Care funding from the State Legislature in the amount of \$275,946.00): Mr. Rapozo moved to approve C 2012-402, seconded by Mr. Chang.

Ms. Yukimura: I just want to say that the Agency on Aging has a stellar record of applying for and administering grants. I am happy to vote for this. Thank you.

Chair Furfaro: I would also like to acknowledge the Executive on Aging, their Home Healthcare Program has won the applause of many individuals in our community and I want to thank them for the very, very good work that they continue to do. Thank you very much.

The motion to approve c 2012-402 was then put, and unanimously carried.

#### LEGAL DOCUMENTS:

C 2012-385 Communication (08/28/2012) from the Civil Defense Manager, recommending Council approval for the second amendment, five (5) year lease agreement between the County of Kaua'i and Bank of Hawai'i, Trustee of the Kukuilono Park Trust Estate, which extends the lease of the County's 800 MHz radio site located at Kukuilono Park in Kalāheo, Kaua'i, Hawai'i, for emergency radio communications for the County of Kaua'i, which license fee will be paid in incremental increases of three percent (3%) each year for the five (5) year period commencing July 1, 2012.

- Second Amendment of License Agreement

Mr. Bynum moved to approve C 2012-385, seconded by Mr. Chang.

There being no objections, the rules were suspended.

Mr. Daligdig: Chelsie, is not related to this item so I am going to leave her back there but she was here to answer questions from a previous item.

Chair Furfaro: How long has Chelsie been with your Department?

Mr. Daligdig: She has been here as long as I have been here and more.

MARK MARSHALL, Emergency Management Officer: Chelsie has been with us for about two and a half years. She just recently married, too.

Chair Furfaro: Thank you for being with us and congratulations. Chelsie, thank you very much. Gentlemen, you want to go over this legal document a little bit with us?

Mr. Daligdig: Yes, this request for approval of the second amendment is related to the Kukuilono Park trust lands that we have a

transmittal site located. The contract expired this past June. I have been working with the Trust Attorney since January to negotiate a contract and I was hoping to negotiate a contract before it expired, but I was not successful. In May, he came up with a proposal that we would realize an 18% increase each year for five (5) years. I was able to negotiate with him over the phone for an increase of 5% versus 18%. But when I put the document together, I accidentally pressed "3" instead of the "5". And as a result, he still approved it. So I am asking that the Council considering approving this contract for a period of five (5) years with an increase of 3% each year.

Chair Furfaro: So Ted, are you telling me in the future we should have you type your negotiated contracts, so that your clerical error plays hard ball with a customer?

Mr. Daligdig: Yes.

Chair Furfaro: Eventually are we going to look into other options?

Mr. Daligdig: Yes.

Chair Furfaro: This seems to be an ongoing revisit every five (5) years.

Mr. Daligdig: Right. What we have considered was executing this contract so we could pay what we owe and use part of the time to negotiate probably a land purchase or something of that sort.

Chair Furfaro: Do I understand that we are somewhat in arrears right now because of terms in the contract that unless we had a new contract, we were not to be paying the fees?

Mr. Daligdig: Yes. Right now the arrears total up to \$14,000.00. It is increased by every month that it will be not paying the contract. The reason why we are not paying the contract is the County Finance—in the absence of a contract, we cannot pay the amount due.

Chair Furfaro: I would think that if there is a term in the contract that says if we do not sign the contract, the terms can be extended month-to-month while we negotiate. Is that not an indication that we should pay the bill?

Mr. Daligdig: Mr. Chair, we have our Attorney here, Justin Kollar, and I would like to ask him to come up and explain to you why we cannot do that.

Chair Furfaro: Justin, would you come and sit next to Mark.

JUSTIN KOLLAR, Deputy County Attorney: Good afternoon, Justin Kollar, for the record, Mr. Chair.

Chair Furfaro: So you heard my question, although the contract is expired, I would assume there is a term in the contract that allows us to pay month-to-month while we negotiate?

Mr. Kollar: There is not any term in the contract that does provide for that.

Chair Furfaro: It does not provide for what? Month-to-month?

Mr. Kollar: That would not provide for a hold over tenancy or something in that nature.

Chair Furfaro: No hold over tenancy?

Mr. Kollar: Right, because contracts involving the County—a holdover tenancy is essentially a new contract. That is a new tenancy. All contracts involving the County need to be in writing and signed by the Department of Finance, along with the certification that those funds are available. So to allow for a holdover tenancy would be in effect, creating an infinite liability for the County without any oversight or imprimatur of the County certifying that funds are available and subject to Council oversight.

Chair Furfaro: When we sign the original contract and got the approval of the Council, if a term on month-to-month was in that contract, to me that is implied that it is approved to give you the negotiating period.

Mr. Kollar: I am not sure I understand the question.

Chair Furfaro: If I was a hotel manager, and had a sundry shop in the building, right? And I signed a five-year lease with them to be in my store for a period of five (5) years at 2% of gross, and \$1,500.00. And I had a condition in there that for a period of time after the expiration, we would stay on the last contract terms month-to-month for a certain period of time until we negotiated a new contract.

Mr. Kollar: You could conceivably put that in there in a contract between private parties. I would recommend against including a term like that in the contract involving the County. Correct.

Chair Furfaro: But your defense as a lawyer telling me there is an implied liability going forward, quite frankly, that was the whole reason to do something like that, so that you could pay the debt as you stayed there and not have this accelerated rent charge.

Mr. Kollar: The best practice and I was not here in 1994 when this original contract was put together, but the best practice is to keep the contracts current.

Chair Furfaro: Good point. We are not current. We are accruing a liability, which is accruing interest. That is a simple yes.

Mr. Kollar: That is true, conceivably.

Chair Furfaro: Thank you. Mr. Rapozo.

Mr. Rapozo: Thank you, Justin. The holdover is not a new contract. It is an extension of the old contract.

Mr. Rapozo: The case law indicates that a provision of a holdover tenancy is, in fact, a new tenancy, because the lease has expired. It is a

contract by its terms, and it is done. What the law does—what the residential landlord-tenant code in Hawai'i implies a new tenancy that continues under the terms of the old tenancy except on a month to month basis. That applies to residential transactions and it also would not apply—by the terms of landlord-tenant code, would not apply to contracts like this one of 15 years or more in duration.

Mr. Rapozo: This contract is not a 15-year contract?

Mr. Kollar: In 1994, license was a 15-year license, extended two times. And they were done as amendments not as new contracts.

Mr. Rapozo: In essence, what you are saying that we do not have a contract right now?

Mr. Kollar: Correct.

Mr. Rapozo: So, they own the equipment?

Mr. Kollar: They do not own it. If we are going to get into specific liabilities and specific legal positions of the County and liabilities, we should probably discuss that in the context of an Executive Session.

Mr. Rapozo: When I spoke to Al, and I guess Al was not as familiar with the case earlier this morning. Anyway, regardless, my point is that why can we not pay what we owe currently? And allowing us to now be what...three (3) months or so behind?

Mr. Kollar: Currently, and I cannot speak for Finance or Purchasing or what their procedures are, but from my perspective; there is no contract in place between the parties and we cannot pay in the absence of a contract. We need a contract in writing signed by the Director of Finance in order for it to be a valid binding contract on the County of Kaua'i under the Charter.

Mr. Rapozo: This would not qualify for a holdover?

Mr. Kollar: Not in my opinion, no.

Mr. Rapozo: Al, is that our opinion? I just got a different answer from Al this morning, which is why I expected a different response today.

ALFRED B. CASTILLO, JR., County Attorney: Good afternoon everyone, Al Castillo, County Attorney. I do not know about the different answer, Councilmember Rapozo. I did tell you that I did not have any idea about this contract because I am not privy to it. But I can understand your practical question regarding why can we not pay it but Justin has answered that. I did tell you this morning that I did not have any knowledge of the contract. I knew about the agenda item. I knew that Justin would be here to answer the questions.

Chair Furfaro: Al, do not go away. I am getting back to this portion that I summarized for you. Does County or does the County not have a liability because we have lived beyond the potential tenancy of this contract? Does or does not a liability exist?

Mr. Castillo: It does.

Mr. Kollar: Potentially, yes.

Chair Furfaro: Potentially?

Mr. Castillo: And what...

Chair Furfaro: I just paid the bill. Do not give us more exposure over here. What if the guy raises the rent?

Mr. Castillo: Okay.

Chair Furfaro: And we were not able to satisfy and negotiate a new deal?

Mr. Castillo: Chair, will all due respect, the caution here is we are in an area where it could end up in litigation. We do not want to make any public statements, please.

Chair Furfaro: I can accept your answer. I am just telling you my view as the business guy, who has managed many, many leases within a resort confine. Okay? So there is some urgency for us to move on this today.

Mr. Castillo: Yes, and it is unfortunate that—I know Director Daligdig started from January and was unsuccessful. We will review this and come up with the best strategy and if you want an Executive Session on this, we can have this.

Chair Furfaro: I just want something that gives us the least risk. That is what I want. Some future contract that says you know, we have a period of time to continue to negotiate on a contract that. That is all I want.

Mr. Bynum: I think I have heard that answer the least risk is to approve this extension. The contract allows us to explore other options for long-term. That is the answer I heard?

Mr. Kollar: Correct.

Ms. Nakamura: I have a question I have a question for the County Attorneys, but I am wondering if it is best asked in Executive Session, given the concerns raised. So I would like to request to go into Executive Session.

Chair Furfaro: Okay.

Mr. Rapozo: I am not comfortable approving a five-year lease because we are going to be locked in for five (5) years. I heard you folks say, "I would like to pass this to negotiate." The negotiations is over if we pass this today. For five (5) years it is over. We can still negotiate, but we are locked into the five-year contract. Is there any opportunity to get that down to a shorter term?

Mr. Kollar: Well, the Director has been the one conducting the negotiations so that would be something that Teddy could answer. Maybe it is legally possible.

Mr. Castillo: Council Chair, can I have a two-minute recess because I understand the practical nature of the questions that are being asked. I have not spoken to Justin or the Department yet, but we may have some answers for you after a short break, please.

Chair Furfaro: We will take a 10-minute recess right now.

There being no objections, the meeting recessed at 3:01 p.m.

The meeting reconvened at 3:12 p.m., and proceeded as follows:

Chair Furfaro: I think what I am going to ask for is a two-week deferral on this. And with the deferral, I am going to also post an Executive Session. So be prepared for some of the questions that we have surfaced now. Obviously, some of it deals with the rents in arrear, and some of it also deals with the negotiation forward. But I am going to post both, and we will see if it is necessary in two (2) weeks. I would like to move to defer this for two (2) weeks, date-specific, October 24. Members, can I get your support on that?

There being no objections, the meeting was called back to order, and proceeded as follows:

Mr. Chang moved to defer C 2012-385, seconded by Mr. Rapozo, and unanimously carried.

C 2012-403 Communication (09/26/2012) from the Director of Parks & Recreation, recommending Council approval to make adjustments to the Lydgate-Kapa'a Shared-Use Path Kapa'a Sands Purchase Agreement, which was approved at the July 28, 2010 Council Meeting, which will result in the anticipated savings of approximately \$17,000.00 for the facility relocation services required in the Purchase Agreement.

- Warranty Deed (TMK (4) 4-3-002:02)

Chair Furfaro: Could I ask the County Attorney to come up for this one because I did get a request from Lenny. He was on the mainland and I would like to hear from you if have any particular discussion with us on this recommendation.

Ms. Nakamura moved to approve C 2012-403, seconded by Mr. Chang.

Chair Furfaro: Since this is a legal document, C 2012-403, if there are any questions, I wanted you to be there. If not, there is a motion to approve this. Okay. Thank you, Al. You are excused.

Mr. Castillo: Thank you.

The motion to approve C 2012-403 was then put, and unanimously carried.

#### CLAIMS:

C 2012-404 Communication (09/17/2012) from the Deputy County Clerk, transmitting a claim filed against the County of Kaua'i by Allstate Insurance Company as subrogee Larry Morris, for damage to his vehicle, pursuant to



Section 23.06 Charter of the County of Kaua'i: Mr. Kualii moved to refer C 2012-404 to the County Attorney's Office for disposition and/or report back to the Council, seconded by Mr. Chang, and unanimously carried.

C 2012-405 Communication (09/17/2012) from the Deputy County Clerk, transmitting a claim filed against the County of Kaua'i by Hawai'i Telecom, for damage to their facility, pursuant to Section 23.06, Charter of the County of Kaua'i: Mr. Kualii moved to refer C 2012-405 to the County Attorney's Office for disposition and/or report back to the Council, seconded by Mr. Chang, and unanimously carried.

#### COMMITTEE REPORTS:

##### PLANNING COMMITTEE:

A report (CR-PL 2012-08 on PL 2012-04) submitted by the Planning Committee, recommending that the following be received for the record:

PL 2012-04 Communication (09/05/2012) from Committee Chair Nakamura, requesting the presence of the Open Space Commission Chair or the Chair's designee to provide a briefing on the Hoban property and other priority projects,"

Mr. Kualii moved for approval CR-PL 2012-08, seconded by Mr. Rapozo, and unanimously carried.

##### HOUSING/TRANSPORTATION/ENERGY CONSERVATION & EFFICIENCY COMMITTEE REPORT:

A report (HTE 2012-11) submitted by the Housing/Transportation/Energy Conservation & Efficiency Committee, recommending that the following be received for the record:

Bill No. 2445 AN ORDINANCE AMENDING ORDINANCE NO. B-2012-736, AS AMENDED, RELATING TO THE OPERATING BUDGET OF THE COUNTY OF KAUAI, STATE OF HAWAII, FOR THE FISCAL YEAR JULY 1, 2012 THROUGH JUNE 30, 2013, BY REVISING THE SURPLUS AND APPROPRIATIONS ESTIMATED IN THE GENERAL FUND (\$310,000.00 – Transportation Agency, Vehicles Automobiles),"

Ms. Yukimura moved for approval CR-HTE 2012-11, seconded by Mr. Kualii, and unanimously carried.

##### FINANCE/PARKS & RECREATION/PUBLIC WORKS PROGRAMS COMMITTEE REPORT:

A report (FFP 2012-12) submitted by the Finance/Parks & Recreation/Public Works Programs Committee, recommending that the following be received for the record:

Bill No. 2443 A BILL FOR AN ORDINANCE AMENDING SECTION 6-5.1 OF THE KAUAI COUNTY CODE 1987, AS AMENDED, RELATING TO PAYMENT TO COUNTY BY CHECK OR NEGOTIABLE INSTRUMENT, SUBSEQUENTLY DISHONORED (Cost Control Commission Recommendation),"

Mr. Rapozo moved for approval CR-FPP 2012-12, seconded by Mr. Bynum, and unanimously carried.

COMMITTEE OF THE WHOLE COMMITTEE REPORT:

A report submitted by the (COW 2012-23) submitted by the Committee Of The Whole Committee, recommending that the following be received for the record:

Bill No. 2449 AN ORDINANCE AMENDING ORDINANCE NO. B-2012-737, AS AMENDED, RELATING TO THE CAPITAL BUDGET OF THE COUNTY OF KAUAI, STATE OF HAWAII, FOR THE FISCAL YEAR JULY 1, 2012 THROUGH JUNE 30, 2013, BY ADDING A NEW BUDGET PROVISIO AND AMENDING AN EXISTING BUDGET PROVISIO IN THE CAPITAL BUDGET RELATING TO PROJECTS FUNDED WITH COMMUNITY FACILITIES DISTRICT BONDS,"

Mr. Rapozo moved for the approval of report, seconded by Mr. Kualii, and unanimously carried.

RESOLUTIONS:

Resolution No. 2012-53, RESOLUTION ESTABLISHING A NO-PARKING AT ANY TIME-FIRE LANE AND A TOW AWAY ZONE AT THE COUNTY OF KAUAI'S PIIKOI AND KAPULE BUILDINGS, LIHU'E CIVIC CENTER, LIHU'E DISTRICT, COUNTY OF KAUAI

Mr. Kualii moved to adopt Resolution No. 2012-53, seconded by Mr. Bynum, and carried by the following vote:

FOR ADOPTION: Bynum, Chang, Kualii, Nakamura, Rapozo, Yukimura, Furfaro	TOTAL-7,
AGAINST ADOPTION: None	TOTAL-0,
EXCUSED & NOT VOTING: None	TOTAL-0.

BILLS FOR FIRST READING:

Proposed Draft Bill (No. 2451) – A BILL FOR AN ORDINANCE REGARDING AMENDING ZONING CONDITIONS IN ORDINANCE NO. PM-175-88, RELATING TO ZONING DESIGNATION IN PRINCEVILLE, KAUAI. (Princeville SC Development, LLC, Applicant): Mr. Kualii moved for passage for Proposed Draft Bill No. 2451 on first reading, that it be ordered to print, that a public hearing thereon be scheduled for November 14, 2012, and that it thereafter be referred to the Planning Committee, seconded by Ms. Yukimura.

Chair Furfaro: We have a motion and second, but I do want to give Councilmember Nakamura the floor.

Ms. Nakamura: Yes, I will be recusing myself from this matter since my husband is involved in legal representation for the applicant.

Ms. Nakamura was noted recused from this item.

Chair Furfaro: Do not go far, Nadine.

The motion for passage of Proposed Draft Bill No. 2451 was then put, and carried by the following vote:

FOR PASSAGE: Bynum, Chang, Kuali'i, Nakamura, Rapozo, Yukimura, Furfaro	TOTAL-6,
AGAINST PASSAGE: None	TOTAL-0,
EXCUSED & NOT VOTING: None	TOTAL-0,
RECUSED & NOT VOTING: Nakamura	TOTAL-1.

**Proposed Draft Bill (No. 2452) – A BILL FOR AN ORDINANCE REGARDING  
ARTICLE 1, CHAPTER 19 OF THE KAUAI COUNTY CODE 1987, AS AMENDED,  
RELATING TO PARKS AND RECREATION PROHIBITING FISHING AT LYDGATE  
BEACH PARK POND**

Mr. Watanabe: This is the one that we changed the title, Chair.

Chair Furfaro: Yes.

Mr. Watanabe: Let me get the correct title—"An ordinance adding a new section to Article 1, Chapter 19 of the Kaua'i County Code 1987, as amended relating to Parks and Recreation prohibiting fishing at Lydgate Beach Park Pond."

Ms. Yukimura moved for passage of Proposed Draft Bill No. 2452 on first reading, that it be ordered to print, that a public hearing thereon be scheduled for November 14, 2012, and that it thereafter be referred to the Finance/Parks & Recreation/Public Works Programs Committee, seconded by Mr. Bynum.

Chair Furfaro: Are there any commentary? I do want to a.k.a., Lydgate Pond is also known as Morgan's Pond. Thank you.

The motion for passage of Proposed Draft Bill No. 2452 was then put, and carried in the following vote:

FOR PASSAGE: Bynum, Chang, Kualii, Nakamura, Rapozo, Yukimura, Furfaro	TOTAL-7,
AGAINST PASSAGE: None	TOTAL-0,
EXCUSED & NOT VOTING: None	TOTAL-0.

**Proposed Draft Bill (No. 2453) – A BILL FOR AN ORDINANCE AMENDING CHAPTER 6, ARTICLE 14, KAUAI COUNTY CODE 1987, AS AMENDED RELATING TO THE PUBLIC ACCESS, OPEN SPACE, AND NATURAL RESOURCES PRESERVATION FUND**

Ms. Yukimura moved for passage of Proposed Draft Bill No. 2453 on first reading, that it be ordered to print, that a public hearing thereon be scheduled for November 14, 2012, and that it thereafter be referred to the Planning Committee, seconded by Mr. Chang.

Chair Furfaro: This is a bill that talks about increasing the Public Access Open Space Natural Resources Preservation Fund from 0.5% of gross property taxes to 1.5% and it is going to be scheduled on the 14<sup>th</sup>.

Ms. Yukimura: I just wanted to say that we will be referring—we will be sending this bill to Finance and the County Attorney for review, so that by the time it gets back in committee, we will have their input.

The motion for passage of Proposed Draft Bill No. 2453 was then put, and carried by the following vote:

FOR PASSAGE: Bynum, Chang, Kualii, Nakamura, Rapozo, Yukimura, Furfaro	TOTAL-7,
AGAINST PASSAGE: None	TOTAL-0,
EXCUSED & NOT VOTING: None	TOTAL-0.

BILLS FOR SECOND READING:

Bill No. 2443 - A BILL FOR AN ORDINANCE AMENDING SECTION 6-5.1 OF THE KAUAI COUNTY CODE 1987, AS AMENDED, RELATING TO PAYMENT TO COUNTY BY CHECK OR NEGOTIABLE INSTRUMENT, SUBSEQUENTLY DISHONORED (Cost Control Commission Recommendation): Ms. Yukimura moved to adopt Bill No. 2443 on second and final reading, and that it be transmitted to the Mayor for his approval, seconded by Mr. Rapozo.

Chair Furfaro: Any discussion, this bill is for second reading?  
Members of the audience? No? Vice Chair Yukimura.

Ms. Yukimura: Just a mahalo to the Cost Control Commission for raising this long overdue issue.

Chair Furfaro: If not, let us do a roll call, please.

The motion to adopt Bill No. 2443 on second and final reading was then put, and carried by the following vote:

FOR ADOPTION: Bynum, Chang, Kualii, Nakamura, Rapozo, Yukimura, Furfaro	TOTAL-7,
AGAINST ADOPTION: None	TOTAL-0,
EXCUSED & NOT VOTING: None	TOTAL-0.

Bill No. 2445 - AN ORDINANCE AMENDING ORDINANCE NO. B-2012-736, AS AMENDED, RELATING TO THE OPERATING BUDGET OF THE COUNTY OF KAUAI, STATE OF HAWAII, FOR THE FISCAL YEAR JULY 1, 2012 THROUGH JUNE 30, 2013, BY REVISING THE SURPLUS AND APPROPRIATIONS ESTIMATED IN THE GENERAL FUND (\$310,000.00 - Transportation Agency, Vehicles Automobiles): Ms. Yukimura moved to adopt Bill No. 2445 on second and final reading and that it be transmitted to the Mayor for his approval, seconded by Mr. Chang.

The motion to adopt Bill No. 2445 on second and final reading was then put, and carried by the following vote:

FOR ADOPTION: Bynum, Chang, Kualii, Nakamura, Rapozo, Yukimura, Furfaro	TOTAL-7,
AGAINST ADOPTION: None	TOTAL-0,
EXCUSED & NOT VOTING: None	TOTAL-0.

Bill No. 2449 - AN ORDINANCE AMENDING ORDINANCE NO. B-2012-737, AS AMENDED, RELATING TO THE CAPITAL BUDGET OF THE COUNTY OF KAUAI, STATE OF HAWAII, FOR THE FISCAL YEAR JULY 1, 2012 THROUGH JUNE 30, 2013, BY ADDING A NEW BUDGET

PROVISO AND AMENDING AN EXISTING BUDGET PROVISO IN THE CAPITAL BUDGET RELATING TO PROJECTS FUNDED WITH COMMUNITY FACILITIES DISTRICT BONDS: Ms. Yukimura moved to adopt Bill No. 2449 on second and final reading, and that it be transmitted to the Mayor for his approval, seconded by Mr. Chang.

The motion to adopt Bill No. 2449 on second and final reading was then put, and carried by the following vote:

FOR ADOPTION: Bynum, Chang, Kualii, Nakamura, Rapozo, Yukimura, Furfaro	TOTAL-7,
AGAINST ADOPTION: None	TOTAL-0,
EXCUSED & NOT VOTING: None	TOTAL-0.

There being no objections, the rules were suspended.

EXECUTIVE SESSION:

ES-571 Pursuant to HRS section 92-4, 92-5(a)(4), and Kaua'i County Charter section 3.07(e), the Office of the County Attorney, on behalf of the Council, requests an executive session to allow the Council to consult with the County Attorney regarding how the Kaua'i Police Department conducts its operations involving surveillance helicopters, and related matters. This briefing and consultation involves consideration of the powers, duties, privileges, immunities, and/or liabilities of the Council and the County as they relate to this agenda item.

Chair Furfaro: Now I would like to—we have one potential—yes, we have one Executive Session scheduled today. So I may I call the County Attorney up. This was actually was my particular piece regarding the Police Department and the helicopter usage. But I think we are asking for a deferral, if I could so note to have you come back in two (2) weeks. We will defer this item for that period of time. Thank you, Al.

Mr. Castillo: Yes, so I do not have to read it then, thank you.

Mr. Rapozo moved to defer ES-571 for two (2) weeks, seconded by Ms. Yukimura, and unanimously carried.

ADJOURNMENT:

There being no further business, the meeting was adjourned at 3:23 p.m.

Respectfully submitted,



RICKY WATANABE  
County Clerk

